

4-23-2015

Agstar Financial v. Gordon Paving Co, Inc Clerk's Record Dckt. 42932

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,)

SUPREME COURT NO. 42932

CASE NO. CV 12-2731

Plaintiff/Appellant- Cross)

Respondent,)

vs)

NORTHWEST SAND & GRAVEL, INC.,)

an Idaho Corporation; GORDON PAVING)

COMPANY, INC., an Idaho Corporation;)

BLACKROCK LAND HOLDINGS, LLC, an)

Idaho Limited Liability Company,)

Defendants/Respondents)

Cross Appellants,)

and)

TOWN AND COUNTRY BANK, INC., and)

FIRE SERVICE OF IDAHO, INC.,)

Defendants/Respondents.)

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District
of the State of Idaho, in and for the County of Twin Falls

HONORABLE RANDY J. STOKER

District Judge

Bradley Dixon
Kersti Kennedy
Stoel Rives, LLP
101 S. Capitol Blvd, Suite 1900
Boise, ID 83702

Brent Robinson
Robinson, Tribe
615 H Street
P. O. Box 396
Rupert, ID 83350

ATTORNEY FOR APPELLANT
CROSS RESPONDENT

ATTORNEY FOR RESPONDENT
CROSS APPELLANT

Date	Code	User	Judge
6/28/2012	NCOC	SCHULZ	New Case Filed-Other Claims Randy J. Stoker
	APER	SCHULZ	Plaintiff: Agstar Financial Services, Aca, Appearance Bradley J Dixon Randy J. Stoker
		SCHULZ	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Stoel Rives Receipt number: 1217760 Dated: 6/28/2012 Amount: \$88.00 (Check) For: Agstar Financial Services, Aca, (plaintiff) Randy J. Stoker
	COMP	SCHULZ	Verified Complaint Randy J. Stoker
	SMIS	SCHULZ	Summons Issued x5 Randy J. Stoker
7/12/2012	AFSV	PIERCE	Affidavit Of Service, Blackrock Land Holdings, LLC., 07/08/2012 Randy J. Stoker
	SMRT	PIERCE	Summons Returned Randy J. Stoker
	AFSV	PIERCE	Affidavit Of Service, Gordon Paving Company, 07/08/2012 Randy J. Stoker
	SMRT	PIERCE	Summons Returned Randy J. Stoker
	AFSV	PIERCE	Affidavit Of Service, Northwest Sand & Gravel, 07/08/2012 Randy J. Stoker
	SMRT	PIERCE	Summons Returned Randy J. Stoker
7/17/2012	AFSV	PIERCE	Affidavit Of Service, Brad L Hales for Town & Country Bank, 07/05/2012 Randy J. Stoker
	SMRT	PIERCE	Summons Returned Randy J. Stoker
	AFSV	PIERCE	Affidavit Of Service, John O Holman for Fire Services of Idaho, 07/09/2012 Randy J. Stoker
	SMRT	PIERCE	Summons Returned Randy J. Stoker
7/19/2012		SCHULZ	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Robinson, Anthon & Tribe Receipt number: 1219662 Dated: 7/19/2012 Amount: \$66.00 (Check) For: Blackrock Land Holdings, LLC, and Id. Imtd liab co (defendant), Gordon Paving Company, Inc. (defendant) and Northwest Sand & Gravel, Inc. (defendant) Randy J. Stoker
	NOAP	SCHULZ	Notice Of Appearance Of Attorney Randy J. Stoker
7/20/2012	APER	SCHULZ	Defendant: Northwest Sand & Gravel, Inc. Appearance Brent T. Robinson Randy J. Stoker
	APER	SCHULZ	Defendant: Gordon Paving Company, Inc. Appearance Brent T. Robinson Randy J. Stoker
	APER	SCHULZ	Defendant: Blackrock Land Holdings, LLC, and Id. Imtd liab co Appearance Brent T. Robinson Randy J. Stoker
7/23/2012	DISM	PIERCE	Voluntary Dismissal of Defendant Town and Country Bank, Inc. Randy J. Stoker

Date	Code	User	Judge
7/23/2012	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: Town And Country Bank, Inc., Defendant; Agstar Financial Services, Aca,, Plaintiff. Filing date: 7/23/2012
	MISC	MCMULLEN	Case reopened, closed in error
8/1/2012	NINT	PIERCE	Notice Of Intent to Take Default on Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc., and Blackrock Land Holdings, LLC
8/3/2012	ANSW	SCHULZ	Answer
	NOSV	SCHULZ	Notice Of Service Of Discovery
9/4/2012	NOSV	AGUIRRE	Notice Of Service
9/10/2012	NOSV	MCMULLEN	Notice Of Service
9/13/2012	NOHG	BANYAI	Notice Of Hearing
	MOTN	BANYAI	Motion for Pre-Judgment Attachment
	HRSC	MCMULLEN	Hearing Scheduled (Motion 10/01/2012 10:00 AM) Motion for Pre-Judgment Writ of Attachment
10/1/2012	DCHH	MCMULLEN	Hearing result for Motion scheduled on 10/01/2012 10:00 AM: District Court Hearing Held Court Reporter: Vasquez Number of Transcript Pages for this hearing estimated: Motion for Pre-Judgment Writ of Attachment
	CMIN	MCMULLEN	Court Minutes
10/2/2012	ORDR	MCMULLEN	Order Denying Motion for PreJudgment Writ of Attachment
10/11/2012	MOTN	PIERCE	Renewed Motion for Pre-Judgment Attachment
	MISC	PIERCE	Declaration of Allison M. Blackman in Support of Renewed Motion for Pre-Judgment Attachment
10/19/2012	NOHG	PIERCE	Notice Of Hearing Plaintiff's Motion for Summary Judgment
	MOSJ	PIERCE	Motion For Summary Judgment
	MEMO	PIERCE	Memorandum in Support of Motion for summary Judgment
	HRSC	MCMULLEN	Hearing Scheduled (Motion for Summary Judgment 11/26/2012 10:00 AM)
10/22/2012	NOHG	PIERCE	Notice Of Hearing
	HRSC	MCMULLEN	Hearing Scheduled (Motion 10/29/2012 10:00 AM) Renewed Motion for Pre-Judgment Writ
10/26/2012	AFFD	MCMULLEN	Affidavit of Travis Klundt in Opposition to Renewed Motion for Pre-Judgment Attachment
	AFFD	MCMULLEN	Affidavit of Brian Hansen in Opposition to Renewed Motion for Pre-Judgment Attachment

Date	Code	User	Judge
10/29/2012	DCHH	AGUIRRE	Hearing result for Motion scheduled on 10/29/2012 10:00 AM: District Court Hearing Held Court Reporter: Vasquez Number of Transcript Pages for this hearing estimated: Renewed Motion for Pre-Judgment Writ
	CMIN	AGUIRRE	Court Minutes
	ORDR	AGUIRRE	Order Denying Motion for Pre-Judgment Writ
11/13/2012	MEMO	PIERCE	Memorandum in Opposition to Motion for Summary Judgment
11/15/2012	AFFD	PIERCE	Affidavit in Opposition to Summary Judgment
11/16/2012	MOTN	BANYAI	Ex-Parte Motion to Shorten Time
11/19/2012	ORDR	COOPE	Order Shortening Time
11/26/2012	DCHH	MCMULLEN	Hearing result for Motion for Summary Judgment scheduled on 11/26/2012 10:00 AM: District Court Hearing Held Court Reporter: vasquez Number of Transcript Pages for this hearing estimated:
	CMIN	MCMULLEN	Court Minutes
	OSCO	MCMULLEN	Order for Scheduling Conference
	ORDR	MCMULLEN	Civil Pre-Trial Order
	HRSC	MCMULLEN	Hearing Scheduled (Scheduling Conference 01/14/2013 10:00 AM)
12/4/2012	ORDR	MCMULLEN	Order Granting Partial Summary Judgment
1/10/2013	STIP	MCMULLEN	Stipulation for Scheduling and Planning
1/11/2013	HRVC	MCMULLEN	Hearing result for Scheduling Conference scheduled on 01/14/2013 10:00 AM: Hearing Vacated
	HRSC	MCMULLEN	Hearing Scheduled (Pretrial Conference 06/17/2013 09:00 AM)
	HRSC	MCMULLEN	Hearing Scheduled (Court Trial 07/16/2013 08:30 AM)
	ORDR	MCMULLEN	Order Approving Stipulated Scheduling Order, Pre-Trial and Court Trial Notice
1/22/2013	AADJ	PIERCE	Affidavit For Amount Due On Judgment
1/29/2013	MOSJ	PIERCE	Renewed Motion For Summary Judgment
2/13/2013	NOSV	PIERCE	Notice Of Service of Discovery
2/19/2013	NOHG	PIERCE	Notice Of Hearing on Plaintiff's Renewed Motion for summary Judgment
	HRSC	MCMULLEN	Hearing Scheduled (Motion for Summary Judgment 03/11/2013 10:00 AM)

Date	Code	User		Judge
2/25/2013	MOCT	PIERCE	Motion To Continue Hearing on Renewed Summary Judgment	Randy J. Stoker
	MOTN	PIERCE	Motion for Mediation	Randy J. Stoker
	AFFD	PIERCE	Affidavit of Brian Hansen in Support of Motion for Mediation and Opposition to Motion for Summary Judgment	Randy J. Stoker
2/26/2013	NOHG	PIERCE	Notice Of Hearing	Randy J. Stoker
2/27/2013	NOHG	PIERCE	Amended Notice Of Hearing	Randy J. Stoker
3/7/2013	MISC	PIERCE	Opposition to Defendants Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc., and Blackrock Land Holdings, LLC's Motion to Continue Hearing on Renewed Summary Judgment and Motion for Mediation	Randy J. Stoker
	AFFD	PIERCE	Affidavit of Allison M. Blackman in Support of Plaintiff's Opposition to Defendants Northwest Sand & Gravel, Inc., Gordon Paving company, Inc., and Blackrock Land Holdings, LLC's Motion to Continue Hearing on Renewed Summary Judgment and Motion for Mediation	Randy J. Stoker
3/8/2013	OBJC	MCMULLEN	Objection to and Motion to Strike Untimely Opposition to Defendants Motion to Continue Hearing on Renewed Summary Judgment and Motion for Mediation and Affidavit of Allison M. Blackman in Support	Randy J. Stoker
	AFFD	MCMULLEN	Affidavit of Matthew C. Darrington in Support of Objection and Motion to Strike Untimely Documents	Randy J. Stoker
	MOTN	MCMULLEN	Motion to Shorten Time for Hearing	Randy J. Stoker
	AFFD	MCMULLEN	Affidavit in Support of Motion to Shorten time on Motion to Strike	Randy J. Stoker
3/11/2013	ORDR	MCMULLEN	Order to Shorten Time and Notice of Hearing	Randy J. Stoker
		MCMULLEN	Notice Of Hearing	Randy J. Stoker
	ORDR	MCMULLEN	Order Denying Motion to Continue, Denying Motion for Summary Judgment, Denying Order for Mediation and Order Appointing Special Master	Randy J. Stoker
	CMIN	COOPE	Court Minutes	Randy J. Stoker
3/22/2013	MOSJ	PIERCE	Agstar Financial Services, ACA's Amended Motion For Summary Judgment	Randy J. Stoker
	AFFD	PIERCE	Affidavit of Allison Blackman in Support of Agstar Financial Services, ACA's Amended Motion for Summary Judgment	Randy J. Stoker

Date	Code	User	Judge
3/25/2013	DCHH	MCMULLEN	Hearing result for Status scheduled on 03/25/2013 01:30 PM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated:
	CMIN	MCMULLEN	Court Minutes
	ORDR	MCMULLEN	Order Appointing Master
5/3/2013	OBJC	PIERCE	Objection to Findings of Special Master
5/15/2013	NOWD	PIERCE	Notice Of Withdrawal of Attorney Allison M. Blackman
5/21/2013	NOHG	PIERCE	Notice Of Hearing on Defendants' Objection to Special Master's Report
	HRSC	MCMULLEN	Hearing Scheduled (Objection 06/03/2013 10:00 AM) Objection to Special Master's Report
5/31/2013	SUBC	PIERCE	Substitution Of Counsel
	APER	PIERCE	Defendant: Northwest Sand & Gravel, Inc. Appearance Matthew C. Darrington
	APER	PIERCE	Defendant: Gordon Paving Company, Inc. Appearance Matthew C. Darrington
	APER	PIERCE	Defendant: Blackrock Land Holdings, LLC, and Id. Imtd liab co Appearance Matthew C. Darrington
6/3/2013	DCHH	MCMULLEN	Hearing result for Objection scheduled on 06/03/2013 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Objection to Special Master's Report
	CMIN	MCMULLEN	Court Minutes
6/14/2013	NOTC	PIERCE	Notice of Vacating Pre-Trial Conference
	HRVC	MCMULLEN	Hearing result for Pretrial Conference scheduled on 06/17/2013 09:00 AM: Hearing Vacated
6/17/2013	MEMO	PIERCE	Supplemental Memorandum in Support of Entry of Judgment and Decree of Foreclosure
6/18/2013	NOHG	PIERCE	Notice Of Hearing
	OBJC	PIERCE	Objection to Judgment and Decree of Foreclosure
6/19/2013	MISC	MCMULLEN	Opposition to Defendants Northwest Sand & Gravel Inc Gordon Paving Co. Inc and Blackrock Land Holdings LLCs Objection to Judgment and Decree of Foreclosure
	ORDR	MCMULLEN	Order on Prepayment Penalty
	JDMT	MCMULLEN	Judgment and Decree of Foreclosure

Date	Code	User	Judge
6/19/2013	HRVC	MCMULLEN	Hearing result for Court Trial scheduled on 07/16/2013 08:30 AM: Hearing Vacated
	CDIS	MCMULLEN	Civil Disposition/Judgment entered: entered for: Blackrock Land Holdings, LLC, and Id. lmtd liab co, Defendant; Fire Service Of Idaho, Inc., Defendant; Gordon Paving Company, Inc., Defendant; Northwest Sand & Gravel, Inc., Defendant; Town And Country Bank, Inc., Defendant; Agstar Financial Services, Aca., Plaintiff. Filing date: 6/19/2013
6/24/2013	SCND	PIERCE	Scanned
7/2/2013		SCHULZ	Miscellaneous Payment: Writs Of Execution Paid by: Stoel Rives Receipt number: 1316821 Dated: 7/2/2013 Amount: \$2.00 (Check)
	MEMO	PIERCE	Plaintiff's Memorandum of Costs and Attorney Fees
	AFFD	PIERCE	Affidavit of Bradley J. Dixon in Support of Plaintiff's Memorandum of Costs and Attorney Fees
7/3/2013	ORDR	AGUIRRE	Order of Sale
	WRIT	AGUIRRE	Writ Issued TF
9/30/2013	ORDR	MCMULLEN	Order Granting Memorandum of Costs and Fees
10/10/2013		WSCOTT	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Stoel Rives LLP Receipt number: 1325544 Dated: 10/10/2013 Amount: \$17.00 (Check)
		WSCOTT	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Stoel Rives LLP Receipt number: 1325544 Dated: 10/10/2013 Amount: \$2.00 (Check)
11/14/2013	AFFD	PIERCE	Affidavit of Heide Bishop Re Prepayment Premium
12/3/2013	NOTC	PIERCE	Notice of Levy
	MISC	PIERCE	Certificate of Sale
	SHRT	PIERCE	Sheriff's Return, POSTED, 10/23/2013
	WRRT	PIERCE	Writ Returned
12/5/2013	NTSD	PIERCE	Notice Of Service Of Discovery
12/6/2013	NOSV	PIERCE	Notice Of Service
12/16/2013	NOHG	PIERCE	Notice of Telephonic Hearing on Plaintiff's Motion for Writ of Assistance
	MOTN	PIERCE	Motion for Writ of Assistance
	MEMO	PIERCE	Memorandum in Support of Motion for Writ of Assistance

Date	Code	User	Judge
12/16/2013	HRSC	MCMULLEN	Hearing Scheduled (Motion 12/30/2013 09:30 AM) Motion for Writ of Assistance Randy J. Stoker
12/18/2013	WRITT	SCHULZ	Writ Issued TF Randy J. Stoker
		SCHULZ	Miscellaneous Payment: Writs Of Execution Paid by: Stoel Rives Receipt number: 1331133 Dated: 12/18/2013 Amount: \$2.00 (Check) Randy J. Stoker
12/20/2013	NSSC	PIERCE	Notice Of Substitution Of Counsel Randy J. Stoker
12/23/2013	MISC	BANYAI	Amended Certificate of Sale to Conform with Request from Twin Falls County Assessor RE: Agstar Address Randy J. Stoker
12/24/2013	RSPN	PIERCE	Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc., and Blackrock Land Holdings, LLC's Response to Motion for Writ of Assistance and Notice to Appear Telephonically Randy J. Stoker
12/27/2013	AFFD	PIERCE	Affidavit of Kersti H. Kennedy in Support of Agstar's Motion for Writ of Assistance Randy J. Stoker
	MISC	MCMULLEN	Agstar's Reply to Defendants Response to Motion for Writ of Assistance Randy J. Stoker
12/30/2013	DCHH	MCMULLEN	District Court Hearing Held Court Reporter: Barksdale Randy J. Stoker
			Number of Transcript Pages for this hearing estimated:
	CMIN	MCMULLEN	Court Minutes Randy J. Stoker
		MCMULLEN	Notice Of Hearing Randy J. Stoker
1/3/2014	HRVC	AGUIRRE	Hearing result for Motion scheduled on 01/06/2014 08:30 AM: Hearing Vacated Motion for Writ of Assistance - continued - by phone, Randy J. Stoker
	ORDR	AGUIRRE	Order On Motion for Writ of Assistance Randy J. Stoker
1/21/2014	NOHG	PIERCE	Notice of Second Hearing on Plaintiff's Motion for Writ of Assistance Randy J. Stoker
	NINT	PIERCE	Notice Of Intent to Present Testimony at Hearing Randy J. Stoker
	HRSC	MCMULLEN	Hearing Scheduled (Motion 02/07/2014 09:00 AM) 2nd Motion for Writ of Assistance Randy J. Stoker
1/28/2014	REQU	PIERCE	Request for Expedited Hearing on Motion for Writ of Assistance Randy J. Stoker
2/6/2014	NINT	PIERCE	Notice Of Intent to Produce Testimony and to Cross-Examine Witnesses Randy J. Stoker
	AFFD	PIERCE	Affidavit in Opposition to Motion for Writ of Possession Randy J. Stoker
	MEMO	PIERCE	Plaintiff's Reply Memorandum in Support of Motion for Writ of Assistance Randy J. Stoker

Date	Code	User	Judge
2/7/2014	DCHH	MCMULLEN	Hearing result for Motion scheduled on 02/07/2014 09:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: 2nd Motion for Writ of Assistance
	CMIN	MCMULLEN	Court Minutes
2/12/2014	NOHG	PIERCE	Notice of Telephonic Hearing on Plaintiff's Motion for Entry of a Deficiency Judgment
	MOTN	PIERCE	Motion for Entry of a Deficiency Judgment
	MEMO	PIERCE	Memorandum in Support of Motion for Entry of a Deficiency Judgment
	HRSC	MCMULLEN	Hearing Scheduled (Motion 03/17/2014 09:30 AM) Motion for Deficiency Judgment
	OBJC	PIERCE	Objection to Proposed Order for Writ of Assistance
2/13/2014	ORDR	MCMULLEN	Second Amended Order on Motion for Writ of Assistance
2/19/2014	MOAM	PIERCE	Motion To Amend Second Amended Order for Writ of Assistance
	AFFD	PIERCE	Affidavit in Support of Motion to Amend Order
2/24/2014		MCMULLEN	Amended Notice Of Hearing
2/26/2014	NOHG	PIERCE	Notice of Telephonic Hearing on Plaintiff's Motion for Transfer of Vehicle Titles
	MOTN	PIERCE	Motion for Transfer of Vehicle Titles
	MEMO	PIERCE	Memorandum in Support of Motion for Transfer of Vehicle Titles
2/27/2014	MOCT	PIERCE	Motion To Continue Hearing
3/4/2014	RSPN	PIERCE	Response to Defendants' Motion to Continue hearing and Request for Evidentiary Hearing
3/5/2014	NOSV	PIERCE	Notice Of Service of Plaintiff's Discovery to Defendants Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc. and Blackrock Land Holdings, LLC Re: Deficiency Judgment
3/12/2014	DCHH	MCMULLEN	Hearing result for Motion scheduled on 03/12/2014 09:30 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Motion for Deficiency Judgment - by phone, Mr. Dixon to initiate
	CMIN	MCMULLEN	Court Minutes
	HRSC	MCMULLEN	Hearing Scheduled (Evidentiary 06/13/2014 09:30 AM)
		MCMULLEN	Notice Of Hearing
3/24/2014	NOHG	PIERCE	Notice Of Hearing

Date	Code	User	Judge
3/24/2014	MOAM	PIERCE	Motion To Amend Second Amended Order for Writ of Assistance
	HRSC	MCMULLEN	Hearing Scheduled (Motion 04/14/2014 10:00 AM) Motion for Writ of Assistance
4/7/2014	RSPN	PIERCE	Response to Defendants' Motion to Amend Order for Writ of Assistance
4/10/2014	MEMO	MCMULLEN	Rebuttal Memorandum to Plaintiff's Response to Defendants Motion to Amend Second Amended Order for Writ of Assistance
4/14/2014	NOTC	MCMULLEN	Notice of Compliance with Discovery
	DCHH	MCMULLEN	Hearing result for Motion scheduled on 04/14/2014 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Motion for Writ of Assistance
	CMIN	MCMULLEN	Court Minutes
	ADVS	MCMULLEN	Case Taken Under Advisement
	ORDR	MCMULLEN	Order Re Possession of Property
4/23/2014		MMILLER	Miscellaneous Payment: Copy Cd Paid by: Robinson & Tribe Receipt number: 1410925 Dated: 4/23/2014 Amount: \$6.00 (Check)
	NAAR	MMILLER	Notice and Agreement RE: Purchase of audio recordings of district and magistrate court proceedings.
4/28/2014	NOHG	PIERCE	Notice Of Hearing
	MORE	PIERCE	Motion to Reconsider
	AFFD	PIERCE	Affidavit of W. Reed Cotton in Support of Motion to Reconsider
4/29/2014	HRSC	MCMULLEN	Hearing Scheduled (Motion 05/12/2014 09:30 AM) Motion to Reconsider
	NOHG	AGUIRRE	Amended Notice Of Hearing
4/30/2014		WSCOTT	Miscellaneous Payment: Copy Cd Paid by: Stoel Rives LLP Receipt number: 1411512 Dated: 4/30/2014 Amount: \$6.00 (Check)
	NAAR	WSCOTT	Notice and Agreement RE: Purchase of audio recordings of district and magistrate court proceedings.
5/5/2014	RSPN	PIERCE	Plaintiff's Response to Defendants' Motion to Reconsider
	AFFD	PIERCE	Affidavit of Bradley J. Dixon in Support of Plaintiff's Response to Defendants' Motion to Reconsider
5/8/2014	TRAN	PIERCE	Reporter's Transcript

Date	Code	User	Judge
5/12/2014	DCHH	MCMULLEN	Hearing result for Motion scheduled on 05/12/2014 09:30 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Motion to Reconsider
	HRSC	MCMULLEN	Hearing Scheduled (Evidentiary 05/29/2014 08:30 AM)
		MCMULLEN	Notice Of Hearing
	CMIN	MCMULLEN	Court Minutes
5/14/2014	NOTC	PIERCE	Notice Vacating Depositions Duces Tecum of Travis Klundt, Bradford Knipe, Mike Wright, Mike Drury and Ron Clark
5/20/2014	NOSV	AGUIRRE	Notice Of Service
5/23/2014	NOTC	BANYAI	Defendants' Notice of Intent to Call and Cross Examine Witnesses
	MEMO	BANYAI	Defendants' Pretrial Memorandum for May 19, 2014, Evidentiary Hearing
5/29/2014	HRVC	MCMULLEN	Hearing result for Evidentiary scheduled on 05/29/2014 08:30 AM: Hearing Vacated
	STIP	COOPE	Stipulation Vacating May 29, 2014 Hearing and Resolving Royalties Issue
6/5/2014	WITN	PIERCE	Plaintiff's Witness List
6/6/2014	MISC	PIERCE	Plaintiff's Exhibit List
	BREF	PIERCE	Agstar Financial Services, ACA's Trial Brief Re Deficiency Judgment Hearing
6/12/2014	MOTN	PIERCE	Plaintiff's Motion in Limine to Exclude the Testimony of Undisclosed Witnesses and Exhibits
	MEMO	PIERCE	Memorandum in Support of Plaintiff's Motion in Limine to Exclude the Testimony of Undisclosed Witnesses and Exhibits
	AFFD	PIERCE	Affidavit of Kersti H. Kennedy in Support of Plaintiff's Motion in Limine to Exclude the Testimony of Undisclosed Witnesses and Exhibits
6/13/2014	DCHH	AGUIRRE	Hearing result for Evidentiary scheduled on 06/13/2014 09:30 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Deficiency
	CMIN	AGUIRRE	Court Minutes
	WITN	AGUIRRE	Evidentiary Witness List
	MISC	PIERCE	Pages Estimate
6/18/2014	HRSC	MCMULLEN	Hearing Scheduled (Court Trial 08/13/2014 08:30 AM)
		MCMULLEN	Notice Of Hearing

Date	Code	User	Judge
6/25/2014	ORDR	COOPE	Order Resolving Royalties Issue Randy J. Stoker
7/3/2014	NOSV	BANYAI	Notice Of Service of Discovery Randy J. Stoker
7/16/2014	WITN	PIERCE	Defendant's Supplemental Witness List Randy J. Stoker
7/18/2014		MMILLER	Miscellaneous Payment: For Comparing And Conforming A Prepared Record, Per Page Paid by: Stoel Rives LLP Receipt number: 1418550 Dated: 7/18/2014 Amount: \$27.50 (Check) Randy J. Stoker
		MMILLER	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Stoel Rives LLP Receipt number: 1418550 Dated: 7/18/2014 Amount: \$5.00 (Check) Randy J. Stoker
7/25/2014	TRAN	PIERCE	Reporter's Transcript Filed Randy J. Stoker
7/31/2014		MMILLER	Miscellaneous Payment: For Comparing And Conforming A Prepared Record, Per Page Paid by: Stoel Rives LLP Receipt number: 1419544 Dated: 7/31/2014 Amount: \$44.00 (Check) Randy J. Stoker
		MMILLER	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Stoel Rives LLP Receipt number: 1419544 Dated: 7/31/2014 Amount: \$8.00 (Check) Randy J. Stoker
8/13/2014	CMIN	AGUIRRE	Court Minutes Randy J. Stoker Hearing type: Court Trial Hearing date: 8/13/2014 Time: 8:36 am Courtroom: Court reporter: Tracy Barksdale Minutes Clerk: Angela L Aguirre Tape Number: Party: Agstar Financial Services, ACA,, Attorney: Bradley Dixon Party: Blackrock Land Holdings, LLC, and Id. lmted liab co, Attorney: Brent Robinson Party: Gordon Paving Company, Inc., Attorney: Brent Robinson Party: Northwest Sand & Gravel, Inc., Attorney: Brent Robinson
	DCHH	AGUIRRE	Hearing result for Court Trial scheduled on 08/13/2014 08:30 AM: District Court Hearing Held Court Reporter: Bailey Number of Transcript Pages for this hearing estimated: Randy J. Stoker
8/14/2014	WITN	AGUIRRE	Court Trial Witness List Randy J. Stoker
	MISC	AGUIRRE	Plaintiff's Exhibit List Randy J. Stoker
	MISC	AGUIRRE	Defendant's Exhibit List Randy J. Stoker
8/18/2014		MMILLER	Miscellaneous Payment: Copy Cd Paid by: Robinson & Associates / Reed Cotten Receipt number: 1420948 Dated: 8/18/2014 Amount: \$6.00 (Credit card) Randy J. Stoker

Date	Code	User	Judge
8/18/2014		MMILLER	Miscellaneous Payment: Postage Paid by: Robinson & Associates / Reed Cotten Receipt number: 1420948 Dated: 8/18/2014 Amount: \$1.40 (Credit card)
		MMILLER	Miscellaneous Payment: Technology Cost - CC Paid by: Robinson & Associates / Reed Cotten Receipt number: 1420948 Dated: 8/18/2014 Amount: \$3.00 (Credit card)
	NAAR	MMILLER	Notice and Agreement RE: Purchase of audio recordings of district and magistrate court proceedings.
8/25/2014	BREF	PIERCE	Agstar Financial Services, ACA's Closing Brief
	MISC	PIERCE	Closing Argument
8/28/2014	OPIN	MCMULLEN	Memorandum Opinion Re Plaintiff's Motion for Deficiency Judgment
	JDMT	MCMULLEN	Judgment
9/4/2014	MOTN	PIERCE	Motion for Order Directing the Defendants to Transfer Titles of Vehicles and for comfort Order Re personal Property Auction
	AFFD	PIERCE	Affidavit of Kersti H. Kennedy in Support of Motion for Order Directing the Defendants to Transfer Titles of Vehicles and for Comfort Order Re Personal Property Auction
9/9/2014	NOHG	PIERCE	Notice Of Hearing
	HRSC	MCMULLEN	Hearing Scheduled (Hearing Scheduled 09/18/2014 01:30 PM) Re Transfer of Titles
9/11/2014	MOTN	PIERCE	Motion for Amendment of Findings of Court Under I.R.C.P. 52(b) and Amendment of Judgment Under I.R.C.P. 59(e)
	MOTN	PIERCE	Defendants' Motion for Award of Attorney's Fees and Costs
	MEMO	PIERCE	Defendants' Memorandum in Support of Motion for Award of Attorney Fees and Costs
	AFFD	PIERCE	Affidavit of Counsel in Support of Defendants' Motion for Award of Attorney Fees and Costs
	MEMO	MCMULLEN	Memorandum In Support of Motion for Amendment of Findings of Court Under IRCP 52(b) and Amendment of Judgment IRCP 59(e)
9/15/2014	MEMO	MCMULLEN	Memorandum in Opposition to Plaintiffs Motion for Order Directing Defendants to Transfer titles of Vehicles and for Comfort Order Re Personal Property Auction
9/17/2014	REPL	PIERCE	Reply to Defendants' Opposition to Order Directing Defendants to Transfer Titles of Vehicles and for Comfort Order Re Personal Property Auction

Date	Code	User	Judge
9/18/2014	DCHH	MCMULLEN	Hearing result for Hearing Scheduled scheduled on 09/18/2014 01:30 PM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Re Transfer of Titles
	HRSC	MCMULLEN	Hearing Scheduled (Motion 11/10/2014 01:30 PM) Pending Motions
		MCMULLEN	Notice Of Hearing
	CMIN	COOPE	Court Minutes
9/19/2014	ORDR	MCMULLEN	Order Directing Idaho Transportation Department, Department of Motor Vehicles, to Issue Titles for Transfer of Motor Vehicles at Auction
	ORDR	MCMULLEN	Order Approving Personal Property Collateral Auction
	NOHG	PIERCE	Notice Of Hearing Re Motion for Amendment of Findings of Court Under I.R.C.P. 52(b) and Amendment of Judgment Under I.R.C.P. 59(e)
9/24/2014	MOTN	MCMULLEN	Motion to Disallow Defendant's Request for Attorney's Fees and Costs
	MEMO	MCMULLEN	Memorandum in support of Plaintiff's Motion to Disallow Defendant's Request for Attorney's Fees and Costs
	NOHG	MCMULLEN	Notice Of Hearing Re Motion to Disallow Defendants' Request for Attorney's Fees and Costs
9/29/2014		BAGRAMYAN	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Tammie L. Gonzalez Receipt number: 1424420 Dated: 9/29/2014 Amount: \$440.00 (Credit card)
		BAGRAMYAN	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Tammie L. Gonzalez Receipt number: 1424420 Dated: 9/29/2014 Amount: \$40.00 (Credit card)
		BAGRAMYAN	Miscellaneous Payment: Postage Paid by: Tammie L. Gonzalez Receipt number: 1424420 Dated: 9/29/2014 Amount: \$6.78 (Credit card)
		BAGRAMYAN	Miscellaneous Payment: Technology Cost - CC Paid by: Tammie L. Gonzalez Receipt number: 1424420 Dated: 9/29/2014 Amount: \$3.00 (Credit card)
10/7/2014		WSCOTT	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: STOEL RIVES, LLP Receipt number: 1425032 Dated: 10/7/2014 Amount: \$104.00 (Credit card)

Date	Code	User	Judge
10/7/2014		WSCOTT	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: STOEL RIVES, LLP Receipt number: 1425032 Dated: 10/7/2014 Amount: \$26.00 (Credit card) Randy J. Stoker
		WSCOTT	Miscellaneous Payment: Postage Paid by: STOEL RIVES, LLP Receipt number: 1425032 Dated: 10/7/2014 Amount: \$5.32 (Credit card) Randy J. Stoker
		WSCOTT	Miscellaneous Payment: Technology Cost - CC Paid by: STOEL RIVES, LLP Receipt number: 1425032 Dated: 10/7/2014 Amount: \$3.00 (Credit card) Randy J. Stoker
10/10/2014		BAGRAMYAN	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Benoit Law Receipt number: 1425331 Dated: 10/10/2014 Amount: \$16.00 (Check) Randy J. Stoker
10/27/2014	NOHG	PIERCE	Notice Of Hearing Re Plaintiff's Motion for Order Directing John Deere to Send Vehicle Title to Agstar Randy J. Stoker
	MOTN	PIERCE	Plaintiff's Motion for Order Directing John Deere to Send Vehicle Title to Agstar Randy J. Stoker
	AFFD	PIERCE	Affidavit of Kersti H. Kennedy in Support of Motion for Order Directing John Deere to Send Vehicle Title to Agstar Randy J. Stoker
10/30/2014	NOSV	BANYAI	Notice Of Service of (1) Plaintiff's Second Set of Interrogatories in Aid of Execution to Defendant and (2) Notice of and Request for Rule 34 Inspection Randy J. Stoker
10/31/2014	OBJC	PIERCE	Defendants' Objection to Plaintiff's Motion for Amendment of Findings of Court Under I.R.C.P. 52 (b) and Amendment of Judgment Under I.R.C.P. 59(e) Randy J. Stoker
	MEMO	PIERCE	Defendants' Rebuttal Memorandum in Support of Its Motion for Award of Attorney Fees and Costs Randy J. Stoker
11/6/2014	REPL	PIERCE	Reply in Support of Motion to Disallow Fees and Costs Randy J. Stoker
11/10/2014	NOTC	PIERCE	Notice of Approval of Transfer Randy J. Stoker
	DCHH	MCMULLEN	Hearing result for Motion scheduled on 11/10/2014 01:30 PM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Pending Motions Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes Randy J. Stoker
11/13/2014	ORDR	COOPE	Order RE Vehicle Title With John Deere Lien Randy J. Stoker
11/18/2014	ORDR	MCMULLEN	Order Denying Plaintiff's Motion to Amend Randy J. Stoker
	JDMT	MCMULLEN	Judgment for Award of Attorney's Fees and Costs Randy J. Stoker

Date	Code	User	Judge
11/20/2014	MISC	BANYAI	Declaration of Joseph Oliver Pursuant To I.C. 11-407
		SGARCIA	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Brian Hansen Receipt number: 1428412 Dated: 11/20/2014 Amount: \$11.00 (Cash)
		SGARCIA	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Brian Hansen Receipt number: 1428412 Dated: 11/20/2014 Amount: \$1.00 (Cash)
11/21/2014	PETN	PIERCE	Plaintiff's Petition for Post-Judgment Attorneys' Fees and Costs
	MEMO	PIERCE	Memorandum in Support of Plaintiff's Petition for Post-Judgment Attorneys' Fees and Costs
	AFFD	PIERCE	Affidavit of Bradley J. Dixon in Support of Plaintiff's Petition for Post-Judgment Attorneys' Fees and Costs
		BANYAI	Miscellaneous Payment: Writs Of Execution Paid by: Brent T. Robinson Receipt number: 1428588 Dated: 11/21/2014 Amount: \$2.00 (Cash)
11/24/2014	SHRT	PIERCE	Sheriff's Return, TKT Excavation & Trucking, 11/21/2014
	WRRT	PIERCE	Writ Returned
11/26/2014		SCHULZ	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Stoel Rives Receipt number: 1428869 Dated: 11/26/2014 Amount: \$129.00 (Check) For: Agstar Financial Services, ACA, (plaintiff)
		SCHULZ	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Stoel Rives Receipt number: 1428872 Dated: 11/26/2014 Amount: \$100.00 (Check)
	NOTA	SCHULZ	NOTICE OF APPEAL
	APSC	COOPE	Appealed To The Supreme Court
11/28/2014	SHRT	PIERCE	Sheriff's Return, TKT Excavation & Trucking, 11/21/2014
12/3/2014	TRAN	PIERCE	Reporter's Transcript
12/5/2014	NTSD	PIERCE	Notice Of Service Of Discovery
	OBJC	PIERCE	Defendants' Objection to Plaintiff's Petition for Post Judgment Fees and Costs
12/8/2014	MISC	PIERCE	Claim of Exemption / Third Party Claim
12/11/2014	MOTN	PIERCE	Motion to Disallow Plaintiff's Claim of Exemption/Third Party Claim
	MOTN	PIERCE	Ex-Parte Motion for Extension of Time for Hearing

Date	Code	User	Judge
12/12/2014	HRSC	MCMULLEN	Hearing Scheduled (Motion 02/09/2015 10:00 AM) Motion to Disallow Plaintiff's Claim of Exemption
	ORDR	COOPE	Order Granting Ex-Parte Motion for Extension of Time for Hearing
12/15/2014	NOFG	PIERCE	Notice Of Filing Motion to Disallow Plaintiff's Claim of Exemptions/Third Party Claim
12/16/2014	NOHG	PIERCE	Notice Of Hearing Re Plaintiff's Petition for Post-Judgment Attorney's Fees and Costs
	HRSC	AGUIRRE	Hearing Scheduled (Motion for Attorney fees and Costs 02/09/2015 10:00 AM) Petition for Post-Judgment Attorney's Fees and Costs
12/17/2014		AGUIRRE	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Robinson, Brent T. (attorney for Gordon Paving Company, Inc.) Receipt number: 1430509 Dated: 12/17/2014 Amount: \$129.00 (Check) For: Blackrock Land Holdings, LLC, and Id. lmted liab co (defendant), Gordon Paving Company, Inc. (defendant) and Northwest Sand & Gravel, Inc. (defendant)
		AGUIRRE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Robinson Anthon and Tribe Receipt number: 1430512 Dated: 12/17/2014 Amount: \$100.00 (Check)
	NOTA	AGUIRRE	NOTICE OF CROSS APPEAL
12/30/2014	CCOA	COOPE	Clerk's Certificate Of Appeal
1/13/2015	HRSC	MCMULLEN	Hearing Scheduled (Motion to Compel 03/09/2015 09:30 AM) by phone, Ms. Kennedy to initiate
2/2/2015	MISC	PIERCE	Plaintiff's Opposition to Defendants' Motion to Disallow Claim of Exemption / Third Party Claim
	MISC	PIERCE	Plaintiff's Opposition to Defendants' Objection to Plaintiff's Petition for Post Judgment Fees and Costs
2/9/2015	DCHH	MCMULLEN	Hearing result for Motion scheduled on 02/09/2015 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Motion to Disallow Plaintiff's Claim of Exemption
	DCHH	MCMULLEN	Hearing result for Motion for Attorney fees and Costs scheduled on 02/09/2015 10:00 AM: District Court Hearing Held Court Reporter: Barksdale Number of Transcript Pages for this hearing estimated: Petition for Post-Judgment Attorney's Fees and Costs

Date	Code	User	Judge
2/9/2015	CMIN	COOPE	Court Minutes Randy J. Stoker
2/10/2015	ORDR	MCMULLEN	Order Re Attorney Fee Claim Randy J. Stoker
2/20/2015	ORDR	MCMULLEN	Order Allowing Claim of Exemption to the Royalty Check Randy J. Stoker
	SHRT	PIERCE	Sheriff's Return, TKT Excavation & Trucking, 11/21/2014 Randy J. Stoker
2/25/2015	WRIT	SCHULZ	Writ Issued TF Randy J. Stoker
		SCHULZ	Miscellaneous Payment: Writs Of Execution Paid by: Northwest Sand & Gravel, Inc. Receipt number: 1505003 Dated: 2/25/2015 Amount: \$2.00 (Cash) Randy J. Stoker
2/26/2015	NOHG	AGUIRRE	Notice of Telephonic Hearing on Plaintiff's Motion to Compel Discovery Randy J. Stoker
	MOTC	AGUIRRE	Motion To Compel Discovery and Alternatively To Request Leave To Propound Additional Interrogatories Randy J. Stoker
	AFFD	AGUIRRE	Affidavit of Kersti H. Kennedy in Support of Plaintiff's Motion to Compel Discovery Randy J. Stoker
	CONT	MCMULLEN	Continued (Motion to Compel 03/23/2015 09:30 AM) by phone, Ms. Kennedy to initiate Randy J. Stoker
2/27/2015	SHRT	AGUIRRE	Sheriff's Return Randy J. Stoker
	WRRT	AGUIRRE	Writ Returned Randy J. Stoker
	MOTN	PIERCE	Plaintiff's Motion for Relief from Judgment Pursuant to Rule 60(b) Randy J. Stoker
	AFFD	PIERCE	Affidavit of Bradley J. Dixon in Support of Plaintiff's Motion for Relief from Judgment Pursuant to Rule 60(b) Randy J. Stoker
	NOHG	PIERCE	Notice Of Hearing on Plaintiff's Motion for Relief from Judgment Pursuant to Rule 60(b) Randy J. Stoker
	NOHG	PIERCE	Amended Notice of Hearing on Plaintiff's Motion to compel Discovery Randy J. Stoker
3/2/2015	SCDF	COOPE	Supreme Court -- Filed Notice of Appeal and Notice of Cross Appeal - Transcripts Requested Please See Attachments. Clerk's Record and Reporters Transcript Due 04-29-15 Randy J. Stoker
3/3/2015	NOTC	COOPE	Notice of Balance Due on Clerk's Record Randy J. Stoker
3/4/2015	AFFD	PIERCE	Supplemental Affidavit of Bradley J. Dixon in Support of Plaintiff's Motion for Relief from Judgment Pursuant to Rule 60(b) Randy J. Stoker
3/10/2015		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Stoel Rives Receipt number: 1506337 Dated: 3/10/2015 Amount: \$184.60 (Check) Randy J. Stoker

Date	Code	User	Judge
3/10/2015	SCDF	COOPE	Supreme Court -- Filed Notice of Balance(s) Due for Preparation of the Clerk's Record (Appellant Owes: \$184.60 and Cross-Appellant Owes: \$27.95) -- Fees Must be Paid to the District Court Clerk within Seven (7) Days or by Tuesday 03-10-15 Randy J. Stoker
3/11/2015	NOTA	PIERCE	Amended Notice of Cross Appeal (Amended to include in the Appeal the Order Re Attorney Fee Claim dated February 10, 2015 and Order Allowing Claim of Exemption to Royalty Check dated February 20, 2015 Randy J. Stoker
		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Robinson & Tribe Receipt number: 1506571 Dated: 3/11/2015 Amount: \$27.95 (Check) Randy J. Stoker
	SCDF	COOPE	Supreme Court -- Note Per Call from District Court was Advised that the Additional Fee for the Documents Requested in the Amended Notice of Cross-Appeal is \$59.80 which is due Immediately Randy J. Stoker
3/17/2015		COOPE	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Robinson & Tribe Receipt number: 1507100 Dated: 3/17/2015 Amount: \$59.80 (Check) Randy J. Stoker
3/19/2015	OBJC	PIERCE	Objection to Plaintiff's Motion for Relief from Judgment Pursuant to Rule 60(b) Randy J. Stoker
	NTOA	COOPE	Corrected Amended Notice Of Appeal (Corrected to Include in the Appeal the Order RE: Attorney Fee Claim Dated February 10, 2015 and Order Allowing Claim of Exemption to Royalty Check Dated February 10, 2015 Randy J. Stoker
3/20/2015	MOTN	MCMULLEN	Motion to Strike Objection to Plaintiff's Motion for Relief from Judgment Pursuant to Rule 60(b) Randy J. Stoker
	NTSD	PIERCE	Notice Of Service Of Discovery Randy J. Stoker
3/23/2015	DCHH	MCMULLEN	Hearing result for Motion to Compel scheduled on 03/23/2015 09:30 AM: District Court Hearing Held Court Reporter: Israel Number of Transcript Pages for this hearing estimated: Also Motion for Relief from Judgment and Motion re Garnishment. Will be in person per plaintiff. Randy J. Stoker
	CMIN	MCMULLEN	Court Minutes Randy J. Stoker
3/30/2015	SCDF	COOPE	Supreme Court Document Filed- Notice of Transcript Lodged - By Barksdale - 11-10-2014 and 02-09-2015 Hearings Please Note that We Still Show 9-18-2014 and 12-16-2014 Motions are Due Randy J. Stoker

Date	Code	User	Judge
3/30/2015	NOTC	COOPE	Notice of Lodging, Tracy Barksdale November 10, 2014 Motions, February 9, 2015 Motion for Attorney's Fees and Costs Randy J. Stoker
	SCDF	COOPE	Supreme Court Filed Amended Notice of Cross Appeal (documents, transcript & reporter identified) Please See Attachment Reset Due Date Transcript and Clerk's Record Due 05-19-15 Randy J. Stoker
	ORDR	MCMULLEN	Order on Motion to Compel Randy J. Stoker
4/1/2015	ORDR	MCMULLEN	Order Denying Plaintiff's Rule 60(b) Motion Randy J. Stoker
4/6/2015	NOTC	COOPE	Notice of Lodging, Tracy Barksdale; Motions Hearing September 18, 2014 Randy J. Stoker
	LODG	COOPE	Lodged: Transcript on Appeal by E-mail Randy J. Stoker

Bradley J. Dixon, ISB No. 6167
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Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2012 JUN 28 PM 1:47

BY _____ CLERK
PS _____ DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV-12-2731

VERIFIED COMPLAINT

Filing Fee: \$88.00

Fee Category: A

COMES NOW Plaintiff AgStar Financial Services, ACA (“AgStar”) by and through its
counsel of record, Stoel Rives LLP, and for causes of action and claims for relief against
Defendants Northwest Sand & Gravel, Inc.; Gordon Paving Company, Inc.; Blackrock Land
Holdings, LLC; Town and Country Bank, Inc.; and Fire Service of Idaho, Inc. (collectively
referred to as “Defendants” or “Issuers”) and complains and alleges as follows:

I. PARTIES

1. AgStar is now and at all times referenced herein has been a federally chartered corporation with principal offices in Rochester, Minnesota.
2. Northwest Sand & Gravel, Inc. is now and at all times referenced herein an Idaho corporation with its principal place of business in Twin Falls, Idaho.
3. Gordon Paving Company Inc. is now and at all times referenced herein an Idaho corporation with its principal place of business in Twin Falls, Idaho.
4. Blackrock Land Holdings, LLC is an Idaho limited liability company with its principal place of business in Twin Falls, Idaho.
5. Town and Country Bank, Inc. filed a financing statement and recorded the same on March 23, 2009 as Instrument No. 2009006191 with the Twin Falls County Recorder claiming an interest in all equipment owned by Gordon Paving Company, Inc.
6. Fire Services of Idaho, Inc. filed a claim of lien and recorded the same on December 15, 2011 as Instrument No. 2011023305
7. AgStar does not know of the existence or identities of any persons or entities, other than the defendants named above, who, as of the date of this Complaint, have or may claim any interest in the real or personal property that is the subject of this action, which is derived (a) through possession, use, or occupation of the subject property, or any portion thereof, or (b) directly or indirectly by, through, or under any one or more of the defendants. AgStar reserves the right to amend this Complaint to add additional parties if it becomes aware of such additional persons or entities. All interests of any and all such persons or entities in the subject property are subordinate and subject to AgStar's interests therein.

II. JURISDICTION AND VENUE

8. Venue is proper in this county pursuant to Idaho Code § 5-401 because a portion of the real and personal property that is the subject of foreclosure in this action is situated in Twin Falls County, Idaho. The courts of the state of Idaho have personal jurisdiction over each of the defendants for one or more of the following reasons: Each of them is either located within, has transacted business within, has committed actions in breach of a contractual obligation within, or owns, uses, and/or possesses real property in the state of Idaho within the terms of Idaho Code § 5-514. This court has jurisdiction over the subject matter of this action pursuant to Idaho Code § 1-705, and the amount in controversy exceeds the jurisdictional threshold of this court.

III. THE BOND PURCHASES

The First Bond Purchase:

9. On or about December 10, 2007, Issuers entered into a Bond Purchase Agreement with AgStar, whereby Issuers agreed to issue a Bond for the principal amount of \$9,000,000 (nine million dollars) (“the First Bond”). A true and correct copy of this 2007 Bond Purchase Agreement is attached hereto as **Exhibit A**¹. A true and correct copy of the First Bond is attached hereto as **Exhibit B**.

10. Issuers’ issue of the First Bond was guaranteed by Craig Hansen GPC Nevada Trust, the Carol Hansen GPC Nevada Trust, Brandon Hansen, individually, and Brian Hansen, individually (“Guarantors”). The Guarantors are not named parties in this lawsuit.

¹ On January 27, 2008, AgStar and the Issuers entered into a First Amendment to the Bond Purchase Agreement, on April 30, 2008, AgStar and Issuers entered into a Second Amendment to the Bond Purchase Agreement, and on September 22, 2010, AgStar and the Issuers entered into a Third Amendment to the Bond Purchase Agreement. A true and correct copy of the three amendments are attached hereto with **Exhibit A**.

11. The Issuers' obligations to pay the First Bond are secured by various Bond Security Documents, including Idaho Open-End Mortgages ("**First Bond Mortgages**") to certain real property located in Cassia County, Idaho and Twin Falls County, Idaho, which were recorded on December 26, 2007 under instruments nos. 2007-320086 and 2007-030884 respectively. A more particular description of the property that is the subject of the Mortgages is provided in the Mortgages (true and correct copies of which are attached hereto as **Exhibit C**). The Issuers' obligations to pay the First Bond are further secured by a Security Agreement providing AgStar with a security interest in certain collateral described therein (a true and correct copy of the Security Agreement is attached hereto as **Exhibit D** and a true and correct copy of the corresponding UCC Financing Statement is attached hereto as **Exhibit E**); as well as a Guaranty executed by the Guarantors.

The Second Bond Purchase:

12. On or about April 30, 2008, Issuers entered into a second Bond Purchase Agreement with AgStar, whereby Issuers agreed to issue a Bond for the principal amount of \$1,000,000 (nine million dollars) ("the Second Bond"). A true and correct copy of this 2008 Bond Purchase Agreement is attached hereto as **Exhibit F**². A true and correct copy of the Second Bond is attached hereto as **Exhibit G**.

13. The Issuers' obligations to pay the Second Bond are secured by various Bond Security Documents, including Idaho Open-End Mortgages ("**Second Bond Mortgages**") to certain real property located in Cassia County, Idaho and Twin Falls County, Idaho, which were recorded on May 1, 2008 under instruments nos. 2008-0002730 and 2008-009853 respectively.

² On September 22, 2010, AgStar and the Issuers entered into a First Amendment to the second Bond Purchase Agreement. A true and correct copy of the amendment is attached hereto with **Exhibit F**.

A more particular description of the property that is the subject of the Second Bond Mortgages is provided in the Second Bond Mortgages (true and correct copies of which are attached hereto as **Exhibit H**). The Security Agreement mentioned above also provides AgStar with a security interest in certain collateral described therein; and a Guaranty executed by the Guarantors.

14. The real property, fixtures and improvements securing the First Bond and Second Bond are hereinafter referred to as the “**Real Property Collateral**.” All other property, including without limitation, the accounts receivables, accounts, deposit accounts, chattel paper, inventory, machinery, equipment, motor vehicles, etc., as described in the Security Agreement securing the 2007 and 2008 Bond Purchase Agreements are hereinafter referred to as the “**Personal Property Collateral**.” The Real Property and Personal Property Collateral may be referred to collectively herein as the “**Collateral**.” Through the recording of the Mortgage and the filing of the financing statement described above, AgStar properly perfected its security interests in all parts of the Collateral.

IV. ISSUERS’ DEFAULT

15. Issuers have failed to make the monthly payments of principal and interest due on both the First Bond and the Second Bond.

16. On April 27, 2012, AgStar sent Issuers a notice of default notifying Issuers that they were in default for, among other things, failure to pay all amounts due and owing and advised of acceleration.

17. The Issuers did not cure the payment defaults. AgStar has received no payments since issuing said notices. On May 10, 2012, AgStar sent a notice of acceleration accelerating the entirety of the bond obligation. Issuers have not submitted said sums. AgStar hereby confirms its election to declare the bonds to be forthwith due and payable.

V. CAUSE OF ACTION

(FORECLOSURE – REAL AND PERSONAL PROPERTY)

18. AgStar re-alleges paragraphs 1 through 17 above.

19. Issuers are in default under the terms of the 2007 Bond Purchase Agreement and the 2008 Bond Purchase Agreement (collectively referred to as the “Bond Purchase Agreements”) for, among other things, their failure to pay all amounts due and owing.

20. AgStar has satisfied all obligations and conditions precedent with respect to its right of foreclosure under the mortgages and security documents described herein.

21. Pursuant to the Bond Purchase Agreements, unpaid interest and default interest has accrued and continues to accrue on this principal amount as well as attorney fees and costs. The total amount due on the Bond Purchase Agreements will be established via affidavits of amounts due.

22. AgStar is entitled to a decree of foreclosure finding that the First Bond Mortgages and Second Bond Mortgages represent a superior lien as against the Collateral and that all other interests in the Collateral be adjudged, declared, and decreed to be subject to, and inferior and subordinate to, the interests of AgStar in all and every portion of the Collateral.

23. AgStar is entitled to decrees of foreclosure ordering that the mortgages be foreclosed upon with respect to the Real Property Collateral under Idaho Law to satisfy the amounts due and owing to AgStar.

24. AgStar is further entitled to a decree of foreclosure and bill of sale ordering the sale of all Personal Property Collateral as defined and allowed under the Security Agreement, in addition to the Real Property Collateral, to satisfy the amounts due and owing to AgStar.

25. No action has been commenced prior to the present action to foreclose on the Collateral or collect the sums due under the Bond Purchase Agreements.

VI. FEES AND COSTS

26. AgStar has engaged counsel to represent it in connection with the Bond Purchase Agreements and is entitled to recover the reasonable attorneys' fees and costs it has incurred, in amounts to be proved hereafter. In the event of default judgment, AgStar should be awarded its fees incurred to date pursuant to the agreements of the parties and an additional \$5,000.00 for prosecuting this action.

VII. PRAYER FOR RELIEF

WHEREFORE, AgStar prays for entry of the following relief:

1. That the mortgages are good and sufficient paramount lien upon the Collateral, securing the payment of the obligations evidenced by the Bond Purchase Agreements, and ordering that the Collateral be foreclosed and sold according to the law and practices of this Court to satisfy the amounts which may be found herein to be due and owing to AgStar;
2. That all of the above captioned Defendants and all persons claiming by, through, or under them, or any of them, be forever barred and foreclosed of all right, title, claim and interest in the Collateral, and/or equity of redemption in and to the Real Property Collateral;
3. That AgStar or any other party to this action may become a purchaser of the Collateral at a sheriff's sale; that following such sale, the county sheriff be ordered to execute and deliver to the purchaser a certificate of sale as required by law for the Real Property Collateral and a Bill of Sale as to the Personal Property Collateral; that following such sale, the county sheriff deliver possession of the Personal Property collateral to the purchaser and 10 days following the sale deliver possession of the Real Property Collateral to the purchaser; and that upon the expiration of the period of redemption with respect to the Real Property Collateral, that

the county sheriff be ordered to execute and deliver a deed to the purchaser of the Real Property Collateral;

4. That AgStar shall be granted the proceeds of such sheriff's sale and shall retain the right to pursue further remedies for any deficiency that may thereafter remain;

5. For attorney fees pursuant to the Bond Purchase Agreements, Idaho Code § 12-120, 12-121 and other applicable law; and

6. For such other and further relief in favor of AgStar, in law or equity, that the Court may deem proper.

DATED: June 26, 2012.

STOEL RIVES LLP



Bradley J. Dixon
Jennifer M. Reinhardt

Attorneys for Plaintiff

VERIFICATION

STATE OF Minnesota)

County of Stearns)

I, Todd G. Kamp, being duly sworn, depose and say that I have been duly empowered and appointed to verify pleadings and papers in the actions and proceedings brought by AgStar; I have read the foregoing Verified Complaint and verify that the allegations contained therein are true and accurate to the extent that I have personal knowledge of the matters set forth in said Complaint and that to the extent that I do not have personal knowledge of the matters set forth in said Complaint, verify that I believe, based upon information provided to me, the same to be true.

Todd G. Kamp

SUBSCRIBED AND SWORN to before me this 25th day of June, 2012.

Sandra M. Hansen
Notary Public for Stearns County
My commission expires: Jan. 31, 2015

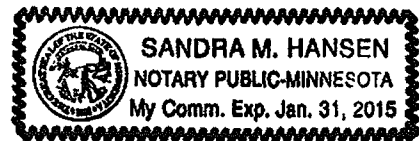


EXHIBIT A

BOND PURCHASE AGREEMENT

Dated as of December 10, 2007

The undersigned, Gordon Paving Co., Inc., an Idaho corporation, Northwest Sand & Gravel, Inc., an Idaho Corporation, and Blackrock Land Holdings, LLC, an Idaho Limited Liability Company, with each having a principal office located at 837 Madrona Street South, Twin Falls, Idaho 83301 (the "Issuer"), hereby confirms its agreements set forth below with Agri-Access®,* a federally chartered corporation with principal offices at PO Box 7438, 3555 9th Street, Ste 400, Rochester MN, 55901 (the "Investor").

1. **Definitions.** As used in this Agreement, the following terms have the following meanings. Terms not otherwise defined in this Agreement have the meanings attributed to them in the Uniform Commercial Code, as amended from time to time, or in any Bond or in any Bond Security Document. All references to dollar amounts mean amounts in lawful money of the United States of America.

"Affiliate" means and includes, but is not limited to: (a) any director, officer or employee of the Issuer or (b) any person who, directly or indirectly either individually or together with his spouse, his lineal descendants and ascendants and brothers and sisters by blood or adoption or spouses of such descendants, ascendants, brothers and sisters, beneficially owns 5% or more of the voting capital stock of the Issuer or (c) any spouse, lineal descendant or ascendant, brother or sister, by blood, adoption or marriage, of any person listed in clause (a) or (b) above, and spouses of such ascendants, descendants, brothers and sisters or (d) any company in which any person described in clause (a), (b) or (c) above owns a 5% or greater equity interest.

"Agreement" means this Bond Purchase Agreement between Issuer and Investor dated as of the date set forth above, including all related schedules, exhibits and addenda.

"Bond" or "Bonds" has the meaning set forth in Section 2(a).

"Bond Register" has the meaning set forth in Section 10.

"Bond Security Document/Bond Security Documents" means collectively, if applicable, the Mortgage, Security Agreement, and such other control agreements, assignments, agreements or documents as may be required by the Investor pursuant to the terms of this Agreement.

"Capital Expenditures" mean the cost of any fixed assets or improvements, replacements, substitutions or additions thereto which have a useful life of more than one year, including the direct or indirect acquisition of such assets by way of purchase, capitalized lease, increased product or service charges, offset items or otherwise.

"Capitalized Lease Obligations" mean lease payment obligations under leases that are required to be capitalized under GAAP.

"Closing Date" has the meaning set forth in Section 2(a).

"Collateral" means and includes, without limitation, all property and assets, now owned or hereafter acquired, granted as collateral security for the Bond in the Mortgage, Security Agreement or Bond Security Document, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, whether granted in the form of a security interest, mortgage,

assignment of rents, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device or any other security or lien interest whatsoever, whether created by law, contract or otherwise.

"Cumulative Net Income" means the excess, if any, of:

- (a) the sum of (i) Net Income, if any, for each completed fiscal year of the Issuer commencing on or after To Be Determined, and (ii) Net Income, if any, for any completed month ending after the end of the most recently completed fiscal year of the Issuer; and
- (b) the sum of (i) Net Loss, if any, for each completed fiscal year of the Issuer commencing on or after January 1, 2008, and (ii) Net Loss, if any, for any completed month ending after the end of the most recently completed fiscal year of the Issuer.

"Cumulative Net Loss" means the excess, if any, of:

- (a) the sum of (i) Net Loss, if any, for each completed fiscal year of the Issuer commencing on or after January 1, 2008, and (ii) Net Loss, if any, for any completed month ending after the end of the most recently completed fiscal year of the Issuer; and
- (b) the sum of (i) Net Income, if any, for each completed fiscal year of the Issuer commencing on or after January 1, 2008, and (ii) Net Income, if any, for any completed month ending after the end of the most recently completed fiscal year of the Issuer.

"Current Assets" mean, as of any date, the current assets of the Issuer determined in accordance with GAAP consistent with those followed in preparation of the Financial Statements referred to in Section 3(e).

"Current Debt" means any obligation for borrowed money payable within 12 months of the date of its creation and not renewable or extendible without the consent of the Investor; provided, however, that any obligation will be treated as Current Debt, regardless of its term, if such obligation arises under a revolving credit or similar arrangement.

"Current Liabilities" mean, as of any date, the current liabilities of the Issuer (including the current portion of Funded Debt), determined in accordance with GAAP consistent with those followed in preparation of the Financial Statements referred to in Section 3(e).

"Current Maturities of Long Term Debt" means the portion of Issuer's Long Term Debt that is payable in the next 12 months as measured in accordance with GAAP.

"Debt Coverage Ratio" means the sum of Net Income, interest, depreciation, depletion and amortization divided by the Current Maturities of Long Term Debt, and interest, determined in accordance with GAAP.

"Distribution" means any dividend, distribution, payment or transfer of property by the Issuer to any member of the Issuer.

"Dividends" mean any payment in cash, property or other assets upon or in respect of any shares of any class of capital stock including, without limiting the foregoing, payments as dividends and payments for the purpose of redeeming, purchasing, or otherwise acquiring any shares of any class of its capital stock, including in the term "stock" any warrant or option or other right to purchase such stock, or making any other distribution in respect of any such shares of stock; excluding, however, any distribution which may be payable solely in common stock of the corporation making the distribution.

"Equipment" means the equipment of the Issuer listed on **Schedule 1.0**.

"ERISA" means the Employee Retirement Income Security Act of 1974 and the regulations adopted pursuant thereto.

"ERISA Affiliate" means each trade or business (whether or not incorporated) which, together with the Issuer, would be deemed to be a single employer within the meaning of Section 4001(b)(1) of ERISA.

"Event of Default" has the meaning set forth in Section 7.

"Fixed Charges" mean, for any period, all interest expense on all indebtedness and Current Maturities of Long Term Debt and current maturities of Capital Lease Obligations, income taxes, and plus or minus other charges as deemed necessary by Investor.

"Funded Debt" means any obligation for borrowed money or for the acquisition of property or any obligation evidenced by a promissory note, bond, or similar instrument, payable more than one year from the date of its creation (or which is renewable at the option of the obligor to a date more than one year from the date of its creation), including the current portion thereof, which under GAAP is shown on the balance sheet as a liability, including but not limited to the Bond and any Capitalized Lease Obligations.

"GAAP" means United States generally accepted accounting principles, consistently applied, for the period in question.

"Guarantor(s)" mean person(s) or entities executing a separate Guaranty as described in Section 2(c).

"Guaranty" has the meaning set forth in Section 2(c).

"Investor" has the meaning set forth in the preamble.

"Issuer" has the meaning set forth in the preamble.

"Long Term Debt" means any obligation for borrowed money payable more than one year after its creation that is not Current Debt, including but not limited to Bonds.

"Margin Stock" has the meaning ascribed to that term in Section 221.2 of Regulation U (12 CFR 221) of the Board of Governors of the Federal Reserve Board.

"Material Adverse Effect" means any set of circumstances or events which: (a) has or could reasonably be expected to have any material adverse effect upon the validity or enforceability of this Agreement, the Bond or any Bond Security Document or any material term or condition contained therein; (b) is or could reasonably be expected to be material and adverse to the condition (financial or otherwise), business assets, operations, or property of the Issuer; or (c) materially impairs or could reasonably be expected to materially impair the ability of the Issuer to perform the obligations under this Agreement, the Bond or any Bond Security Document.

"Minimum Fixed Charge Coverage Ratio" means, the net income before taxes, plus interest expense plus depreciation plus amortization divided by total debt service plus capital expenditures. This ratio shall be calculated on a consolidated basis on an annual basis from the issuers' FYE financial statements.

"Mortgage" has the meaning set forth in Section 2(d)(i).

"Mortgaged Property" has the meaning set forth in Section 2(d)(i).

"Net Income (Net Loss)" means, for any period, the net after-tax income (or net loss) of the Issuer determined in accordance with GAAP consistent with those followed in preparation of the Financial Statements referred to in Section 3(e).

"Net Income Available for Fixed Charges" mean, for any period, the total of the following calculated for the Issuer for such period: (i) net income; plus (ii) any provision for (or less any benefit from) income taxes included in determining such net income; plus (iii) interest expense deducted in determining such net income; and plus (iv) amortization and depreciation expense deducted in determining such net income.

"Net Worth" means the total assets of Issuer minus the total liabilities of Issuer, as determined in accordance with GAAP.

"PBGC" means the Pension Benefit Guaranty Corporation established under ERISA, or any successor thereto.

"Plan" means any employee pension benefit plan within the meaning of Section 3(2) of ERISA.

"Purchase Price" has the meaning set forth in Section 2(a).

"Security Agreement" has the meaning set forth in Section 2(d)(ii).

"Security Interest" means and includes, without limitation, any type of collateral security, whether in the form of a lien, charge, mortgage, assignment of rents, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest, whether created by law, contract, or otherwise.

"Total Capitalization" means, as of any date, the sum of Net Worth and Funded Debt (excluding the current portion thereof).

2) Purchase and Sale of Bond

- a) The Bond. Subject to the terms and conditions in this Agreement, the Issuer will sell to the Investor on or before To Be Determined, (the date of sale being herein called the **"Closing Date"**), and the Investor will purchase from the Issuer on the Closing Date, the Bond (the **"Bond"**), for the principal amount of \$9,000,000.00 (the **"Purchase Price"**), dated as of the Closing Date. The payment of principal, computation and payment of interest, amortization, maturity and other terms and conditions of the Bond are as provided in the Bond.
- b) Disbursements. The Purchase Price will be disbursed to the Issuer against delivery of the Bond on the Closing Date.
- c) Guaranty. The due and punctual payment by the Issuer of the principal of, premium, if any, and interest on the Bond, and the performance by the Issuer of the terms and conditions of this Agreement, the Bond and the Bond Security Documents shall be unconditionally and irrevocably guaranteed by the Craig Hansen GPC Nevada Trust, the Carol Hansen GPC Nevada Trust, Brandon Hansen, individually, and Brian Hansen, individually, the Guarantors pursuant to a guaranty agreement, of even date with this Agreement (the **"Guaranty"**), in a form acceptable to the Investor.

d) Security. Payment of any and all Bonds and the obligations of the Issuer under this Agreement shall be secured by the Bond Security Documents, including but not limited to:

- i) a mortgage or deed of trust of even date with this Agreement (the "**Mortgage**"), in a form acceptable to the Investor, subject to no other liens or encumbrances except as may be acceptable to the Investor, on the real property described in the Mortgage (the "**Mortgaged Property**");
- ii) a security agreement of even date with this Agreement (the "**Security Agreement**") in a form acceptable to the Investor by which Security Agreement the Issuer shall grant a Security Interest in the Collateral described therein, subject to no other liens or encumbrances (except to the extent permitted by Section 5(h) hereof);
- iii) a Security Interest, subject to no other liens or encumbrances (except to the extent permitted by Section 5(h) hereof), in Collateral described in any other Bond Security Document of even date with this Agreement in a form acceptable to the Investor.

e) Purchase Price Payment. The Investor will pay the Purchase Price for the Bond by wire transfer of immediately available Federal funds to such accounts as shall be specified by the Issuer, or in such other funds or in such other manner as may be mutually agreed upon by the Investor and the Issuer, against delivery to the Investor of the Bond.

f) Fees and Costs. The Issuer has hereto fore deposited with the Investor the amount of \$2,500.00 as and for a non-refundable document fee for the transactions contemplated by this Agreement. The Issuer shall pay any and all closing costs and fees as agreed upon between the parties currently estimated to be approximately \$445,889.00.

g) Maximum Rate. Notwithstanding anything to the contrary in the Bond, this Bond Purchase Agreement or any of the Bond Security Documents, Issuer shall not be required to pay unearned interest on the Bond, or ever be required to pay interest on the Bond at a rate in excess of the Maximum Rate, if any. If the effective rate of interest which would otherwise be payable under the Bond, this Bond Purchase Agreement or any of the Bond Security Documents would exceed the Maximum Rate, if any, then the rate of interest which would otherwise be contracted for, charged, or received under the Bond, this Bond Purchase Agreement or any of the Bond Security Documents shall be reduced to the Maximum Rate, if any. For purposes of the Bond and this Bond Purchase Agreement, "Maximum Rate" means the maximum nonusurious interest rate, if any, at any time, or from time to time, that may be contracted for, taken, reserved, charged or received under applicable state or federal laws.

3) **Representations and Warranties**. The Issuer represents and warrants to the Investor as follows:

a) Organization. Two of the Issuer's are corporations and one of the Issuer's is a limited liability company, each of which is organized, existing and in good standing under the laws of the States of its respective organization, and is duly qualified to do business and is in good standing under the laws of each State where the nature of the business done or property owned require such qualification. Each Issuer is organized under the laws of the State of Idaho. The respective Issuer's do not own, directly or indirectly, more than 1 % of the total outstanding capital stock of any class of any other corporation, limited liability company, partnership or other entity.

b) Conflicting Agreements and Other Matters. Neither the execution and delivery by the Issuer of this Agreement, the Bond or Bond Security Documents, nor the performance or observance by

the Issuer of any of the terms or conditions of this Agreement, the Bond or Bond Security Documents,

- i) will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any lien upon any of the properties or assets of the Issuer pursuant to, the Articles of Incorporation or Bylaws of the Issuer, any award of any arbitrator, or any indenture, contract or agreement, including any agreement with a stockholder, member or partner, instrument, order, judgment, decree, statute, law rule or regulation to which the Issuer is subject;
 - ii) or require any registration or filing with, or any consent or approval of, any federal, state or local governmental agency or authority.
- c) Due Authorization. The execution and delivery of this Agreement, the Bond and the Bond Security Documents have been duly authorized by all necessary entity actions of the Issuer.
- d) Legal Proceedings. Except for matters disclosed on **Schedule 3(d)** hereto, there are no actions, suits, or proceedings pending or, to the knowledge of the Issuer, threatened against the Issuer or any property of the Issuer in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to the Issuer, would have a Material Adverse Effect upon the Issuer or upon the business or properties of the Issuer.
- e) Financial Statements. The Issuer has furnished to the Investor a balance sheet, statement of income and retained earnings, and statement of cash flows of the Issuer more fully described in attached **Schedule 3(e)** (collectively the "**Financial Statements**"). The Financial Statements fairly present the financial condition of the Issuer at the date(s) thereof and the results of operations of the Issuer for the period(s) indicated, all in conformity with GAAP. There have been no changes causing a Material Adverse Effect in the condition, financial or otherwise, of the Issuer since the latest balance sheet referred to in this Section 3(e).
- f) Title to Assets. The Issuer has good and marketable title in fee simple to all real property and good title to all personal property it purports to own, including (except as they have been affected by transactions in the ordinary course of business) all properties and assets reflected in the most recent balance sheet referred to in Section 3(e) hereof. In the case of property used in its trade or business but not owned by it, the Issuer has a valid, binding and enforceable right to use such property pursuant to a written lease, license or other agreement. All properties and assets of the Issuer are free and clear of all mortgages, deeds of trust, liens, pledges, charges and encumbrances (other than liens permitted by Section 5(h) hereof).
- g) Intellectual Property. Issuer owns, or has the legal right to use, all patents, trademarks, trade names, copyrights, technology, know-how and processes ("Intellectual Property") necessary for it to conduct its business as currently conducted except for those the failure to own or have such legal right to use could not reasonably be expected to have a material effect. As of the Closing Date, set forth in **Schedule 3(g)** is a list of all Intellectual Property registered with the United States Copyright Office or the United States Patent and Trademark Office and owned by Issuer or that Issuer has the right to use. Except as provided in **Schedule 3(g)**, no claim has been asserted and is pending which is challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does Issuer know of any such claim, and, to the knowledge of the Issuer, the use of such Intellectual Property by the Issuer does not infringe on the rights of any person.
- h) Securities Matters. The Issuer represents to Investor that it is selling the Bond under an exemption under Section 5 of the Securities Act of 1933, as amended, or that the sale of the

Bond to the Investor does not come under the provisions of Section 5 of the Securities Act of 1933.

- i) Licenses and Permits. The Issuer has procured and is now in possession of all licenses and permits required by federal, state or local laws for the operation of the business of the Issuer in each jurisdiction wherein the Issuer is now conducting or proposes to conduct business.
- j) No Defaults on Indebtedness. The Issuer is not in default in the payment of the principal of or interest on any indebtedness for borrowed money nor in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued, and no event has occurred under the provisions of any such instrument or agreement which with or without the passing of time or the giving of notice, or both, constitutes or would constitute an event of default thereunder.
- k) Tax Returns. The Issuer has filed all federal and state income tax returns which, to the knowledge of the officers of the Issuer, are required to be filed, and have paid all taxes shown on said returns and all assessments received by it to the extent that they have become due. The federal income tax returns of the Issuer have been finally determined by the Internal Revenue Service to be satisfactory (or have been closed by the applicable statute of limitations) for all years prior to and including the year ended prior to the Closing Date. No claims have been asserted against the Issuer in respect of federal income tax returns for any subsequent year.
- l) No Margin Stock. The Issuer owns no Margin Stock and none of the proceeds received by the Issuer from the sale of the Bond will be used for the purpose of purchasing or carrying Margin Stock or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase Margin Stock or for any other purpose not permitted by Regulation U (12 CFR 221) of the Board of Governors of the Federal Reserve System, as amended from time to time.
- m) ERISA Matters. Each Plan of the Issuer and each ERISA Affiliate in which any employees of the Issuer or any ERISA Affiliate participate that is subject to any provisions of ERISA is being administered in accordance with the documents and instruments governing such Plan, and such documents and instruments are consistent with those provisions of ERISA and the Internal Revenue Code, which have become effective and operative with respect to such Plan as of the date of this Agreement. No such Plan has incurred any material accumulated funding deficiency within the meaning of Section 302 of ERISA (whether or not waived), and neither the Issuer nor any ERISA Affiliate has incurred any material liability (including any material contingent liability) to the PBGC in connection with any such Plan. No such Plan nor any trust created thereunder nor any trustee or administrator thereof has engaged in a "prohibited transaction" within the meaning of ERISA or Section 4975 of the Internal Revenue Code and the issuance and sale of the Bond as contemplated hereby will not constitute a "prohibited transaction". No such Plan nor any trust created thereunder has been terminated, nor have there been any "reportable events" within the meaning of Section 4043 of ERISA with respect to any such Plan. Neither the Issuer nor any ERISA Affiliate contributes to or has any employees who are covered by any "multiemployer plan," as such term is defined in Section 3(37) of ERISA, and neither the Issuer nor any ERISA Affiliate has incurred any withdrawal liability with respect to any such multiemployer plan.
- n) Brokers and Finders. Neither the Issuer, any agent acting on its behalf, nor any person controlling, controlled by or under common control with the Issuer has taken any action the effect of which would be to cause the Investor to be liable for any broker's, finder's or agent's fee or commission in connection with the placement of the Bond or any other transactions

contemplated by this Agreement other than fees which Investor may have paid from Investor's funds. The Issuer has retained no one as a broker or finder in connection with the placement of the Bond or any other transactions contemplated by this Agreement

- o) Use of Proceeds. The Issuer will use the proceeds of the Bond in accordance with the permitted uses set forth in the Bond.
 - p) Investment Company Act. The Issuer is not an "investment company" or a company "controlled" by an "investment company", as each of the quoted terms is defined or used in the Investment Company Act of 1940, as amended.
 - q) Full Disclosure. Neither this Agreement, the Financial Statements referred to in Section 3(e) hereof, nor any other document, certificate or instrument delivered to the Investor on behalf of the Issuer in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein not misleading. There is no material fact (other than general economic conditions or facts or information available to the public generally) that has not been disclosed in writing to the Investor that may or could reasonably have a Materially Adverse Effect on the business operations or financial or other condition of the Issuer or the ability of the Issuer to perform this Agreement or to pay the principal of or interest on the Bond and other sums payable under this Agreement when due.
 - r) Additional Representations and Warranties. In addition to the representations and warranties set forth in this Section 3, the Issuer represents and warrants to the Investor the following representations and warranties, if any: None
4. **Affirmative Covenants**. The Issuer covenants and agrees that, so long as any amount shall remain unpaid on the Bond, it will:
- a. Payment. Duly and punctually pay or cause to be paid the principal of and interest on the Bond and will duly and punctually perform or cause to be performed all things on its part to be done or performed under this Agreement, the Bond, and the Bond Security Documents.
 - b. Prepayment. The Issuer may prepay this Bond in whole or in part only upon notice to Investor, subject to the conditions set forth in the Bond.
 - c. Business of Books and Records.
 - i. At all times, keep or cause to be kept proper books of record and account in which full, true and correct entries will be made of their transactions in accordance with GAAP, applied on a consistent basis throughout the periods involved.
 - ii. At all reasonable times, permit the Investor and their representatives to inspect its books and records and to make extracts therefrom and to inspect its properties and operations.
 - d. Financial.
 - i. From time to time, furnish the Investor with such information and statements as the Investor may reasonably request concerning performance by it of the covenants and agreements contained in this Agreement, the Bond, and the Bond Security Documents.
 - ii. From time to time and no less often than at least within 120 days after the end of each fiscal year, furnish the Investor with such information and statements (including, without limitation, balance sheets, statements of income and retained earnings, tax returns, and statements of cash flows prepared in accordance with GAAP), as the Investor may reasonably request, reflecting the

financial condition of the Issuer and the results of Issuer's operations over a specified accounting period, all in reasonable detail, and setting forth comparable figures for the same accounting period in the preceding fiscal year. Statements shall be on a consolidated basis but also provide sufficient detail as to evaluate each company independently. Consolidated statement should reflect elimination of intercompany transactions.

- iii. Issuer shall cause the Guarantors to furnish to Investor upon request of Investor, but no less frequently than annually, completed and detailed personal financial statements as well as copies of the Guarantors personal income tax returns, together with all schedules and K-1, and other financial information as reasonably requested by Investor.
- iv. At the time of the delivery to the Investor of the information and statements referred to in **Section 4(d)(f)**, deliver to the Investor a certificate signed by a person duly authorized by the Issuer to certify that she or he has reviewed the provisions of this Agreement and stating, in her or his opinion, if such be the fact, that the Issuer has not been and is not in default as to any of the provisions contained in this Agreement, or, in the event the Issuer is or was in default, setting forth the details of such default. Such certificate shall set forth the computations upon which such person based the conclusion that the Issuer is and has been in compliance with **Sections 4 and 5** hereof.
- e. Corporate and Limited Liability Company Existence. Maintain its respective corporate and limited liability company existence in good standing and comply with all applicable laws and regulations of the United States and of each state thereof and of each political subdivision thereof and of any and all other governmental authorities.
- f. Payment of Taxes and Claims. Pay before they become delinquent
 - i. all taxes, assessments and governmental charges or levies imposed on the Issuer or upon the property of the Issuer;
 - ii. all claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like persons which, if unpaid, might result in the creation of a lien or charge upon any property of the Issuer; and
 - iii. all claims, assessments or levies required to be paid by the Issuer pursuant to any agreement, contract, law, ordinance or governmental rule or regulation governing any pension, retirement, profit-sharing or any similar plan of the Issuer, provided that the Issuer shall have the right to contest in good faith, by appropriate proceedings promptly initiated and diligently conducted which will prevent the forfeiture or sale of any property of the Issuer or any material interference with the use thereof by the Issuer, the validity, amount or imposition of any of the foregoing and upon such good faith contest to delay or refuse payment thereof, if such reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor.
- g. Maintenance of Properties. Maintain and keep its properties in good repair, working order and condition, and from time to time make all necessary and proper repairs, renewals and replacements, to include but not be limited to, any permitting or other documentation as may be required by both State and Federal law, so that the business carried on in connection therewith may be properly and advantageously conducted at all times. From time to time but no less than annually, furnish the Investor with such information, statements, and copies of documentation as the Investor may reasonably request concerning maintenance of properties.
- h. Insurance.
 - i. Risks to be Insured. Including without limitation insurance referred to in section 6, the Issuer will at its expense maintain with insurers satisfactory to the Investor:

1. appropriate workers' compensation insurance to the extent required by the law of the states in which the Issuer is engaged in business and to the extent necessary to protect the Issuer or the Investor against workers' compensation claims;
 2. such other insurance, in such amounts and against such risks, as is commonly obtained in the case of businesses similar to that of the Issuer, or is reasonably requested by the Investor. The Issuer will comply with such other requirements as the Investor may reasonably request for the protection by insurance of its interest or as required in any Bond or Bond Security Document. Such insurance shall be written by companies of nationally recognized financial standing legally qualified to issue insurance and reasonably acceptable to the Investor.
 3. insurance with respect to the Mortgaged Property against physical loss (including without limitation loss resulting from fire, lightning, wind and hail, sprinkler leakage, explosion and smoke), written on an "all risks" replacement cost basis, in amounts sufficient to prevent the Investor or the Issuer from becoming a co-insurer of any partial loss under the applicable policies;
 4. public liability, including personal injury and property damage, insurance applicable to the Mortgaged Property in such amounts as are usually carried by persons operating similar properties in the same general locality but in any event with a combined single limit of not less than \$ To Be Determined per occurrence and \$ To Be Determined in the aggregate; and
- ii. Policy Provisions. All insurance maintained by the Issuer pursuant to this Agreement shall (i) name the Issuer and the Investor as insured, as their respective interests may appear, (ii) provide, except in the case of public liability insurance, that all insurance proceeds for losses of less than \$25,000 shall be adjusted with and payable to the Issuer and that all insurance proceeds for losses of \$25,000 or more shall be adjusted with the Issuer and the Investor jointly, but shall be payable to the Investor, (iii) include effective waivers by the insurer of all claims for insurance premiums against the Investor, (iv) provide that any losses shall be payable notwithstanding (A) any act of negligence of the Investor or the Issuer, (B) any foreclosure or other proceedings or notice of sale relating to the Mortgaged Property, or (C) any change in the title to or ownership of the Mortgaged Property, (v) provide that no cancellation thereof shall be effective until at least 30 days after receipt by the Investor of written notice thereof, and (vi) be reasonably satisfactory to the Investor in all other respects.
 - iii. Delivery of Insurance Certificates. The Issuer will deliver to the Investor certificates evidencing the existence of all insurance policies with respect to the Mortgaged Property which the Issuer is required to maintain or cause to be maintained pursuant to this paragraph together with evidence as to the payment of all premiums then due thereon.
- i. Remuneration. Pay reasonable compensation, whether by way of salaries, bonuses, participations in pension or profit sharing plans, fees under management contracts or for professional services, to any of its officers, directors, employees, members, partners or stockholders only in amounts which are not in excess of reasonable compensation paid for similar services by similar businesses.
 - j. Financial Covenants.
 - i. Fixed Charge Coverage Ratio. Maintain a Minimum Fixed Charge Coverage Ratio of 1.15. This ratio shall be defined as net income before taxes plus interest expense plus depreciation plus amortization divided by interest

- expenses plus current portion long term debt plus capital expenditures plus taxes plus distributions. This ratio shall be calculated on a consolidated basis.
- ii. Liquidity Ratio. At all times maintain a ratio of Current Assets divided by Current Liabilities of not less than 1.20 to 1. This shall be calculated from the consolidated financial statements of the Issuers.
 - iii. Owner Tangible Equity. Maintain an Owner Tangible Equity of no less than 10%. Tangible Owner Equity is calculated by dividing the difference between total assets and total liabilities by the total assets less intangibles. This ratio shall be calculated from the consolidated reviewed financial statements of the Issuers.
 - iv. Additional Financial Benchmarks. Maintain such other financial benchmarks as the Investor may from time to time reasonably request.
- k. Notice of Default. Give the Investor prompt notice in writing of any condition or event which constitutes an Event of Default under Section 7 hereof, or which, after notice or lapse of time, or both, would constitute such an Event of Default.
 - l. Exchange of Bond. At any time, at its expense, upon written request of the Investor and surrender of the Bond for such purpose, issue a new Bond or Bonds in exchange therefor in such denominations of at least \$250,000.00 as shall be specified by the holder of such Bond, in an aggregate principal amount equal to the then unpaid principal amount of the Bond surrendered in a form acceptable to the Investor, with appropriate insertions and variations, and bearing interest from the date to which interest has been paid on the Bond surrendered.
 - m. Reference in Financials. Include, or cause to be included, a reference (by way of footnote or otherwise) to the Bond and to this Agreement in all financial statements of the Issuer for periods ending after the Closing Date which are furnished to stockholders, creditors and prospective creditors.
 - n. Qualified Retirement Plans. Cause each Plan of the Issuer and any ERISA Affiliate in which any employees of the Issuer or any ERISA Affiliate participant that is subject to the provisions of ERISA or the Internal Revenue Code and the documents and instruments governing each such Plan to be conformed to when necessary, and to be administered in a manner consistent with those provisions of ERISA or the Internal Revenue Code which may, from time to time, become effective and operative with respect to such Plans; if requested by the Investor in writing from time to time, furnish to the Investor a copy of any annual report with respect to each such plan that the Issuer files with the Internal Revenue Service pursuant to ERISA. The Issuer will not, and will not permit any ERISA Affiliate to (i) engage in any "prohibited transaction," (ii) incur any "accumulated funding deficiency," whether or not waived, or (iii) terminate any Plan in a manner which could result in the imposition of a lien on any property of the Issuer or any ERISA Affiliate.
 - o. Additional Covenants. In addition to the covenants set forth in this Section 5 the Issuer covenants and agrees as set forth to the additional Covenants as follows, if any:
 - i. Issuer shall, on or before 120 days after the date of this Bond Purchase Agreement, have finished all actions to bring in to compliance with all state, federal, and local laws and regulations, the above ground storage tanks located at Issuer's facility at 1310 Addison Avenue West, Twin Falls, Idaho. Failure to comply with this covenant shall constitute a condition of default under the Bond Documents.
 - ii. Issuer shall, on or before 120 days after the date of this Bond Purchase Agreement, have finished all actions in compliance with all state, federal, and local laws and regulations, to remove from the Issuer's facility at 1310 Addison Avenue West, Twin Falls, Idaho, empty storage tanks, 32 fifty gallon containers with oil in them, and the two piles of used tires. Failure to comply with this covenant shall constitute a condition of default under the Bond Documents.

- iii. From time to time and no less often than at least within 120 days after the end of each year during the term of the Bond, furnish the Investor with evidence of all reclamation plans, mining permits, and bonding for all gravel pits on Mortgaged Property.

5. **Negative Covenants** The Issuer covenants and agrees that so long as any amount shall remain unpaid on the Bond, it will not:

- a. Permitted Indebtedness. Borrow money, issue evidences of indebtedness or create, assume, guarantee, become contingently liable for or suffer to exist indebtedness in addition to the Bond (including, without limitation, Capitalized Lease Obligations as indebtedness) except:

- i. Funded Debt of the Issuer incurred in connection with the acquisition of machinery and equipment used in the business of the Issuer and not held as inventory for sale or lease, which indebtedness is secured by conditional sales contracts, title retention agreements or other purchase money security interests, or constitutes a Capital Lease Obligation, provided that the indebtedness secured by any such security interest shall not exceed 80% (or 100% in the case of Capitalized Lease Obligations) of the cost of the assets acquired subject thereto and such security interest shall not encumber any property of the Issuer other than the assets acquired subject thereto, and provided further that the aggregate amount of all such indebtedness secured by such security interests at any time outstanding shall not exceed \$300,000.00 in any twelve-month period without the consent of the Investor, such consent not to be unnecessarily withheld.
- ii. Current Debt of the Issuer to banks, which indebtedness is secured and/or unsecured, and provided further that the aggregate amount of such indebtedness at any time outstanding shall not exceed \$500,000.00 in any twelve-month period without the consent of the Investor, such consent not to be unnecessarily withheld.
- iii. Existing Current Debt or Funded Debt of the Issuer not otherwise permitted by this Section 5(a) and set forth in **Schedule 5(a)(iii)** hereto, provided that all such Current Debt or Funded Debt shall be repaid in accordance with its terms and the schedule set forth in **Schedule 5(a)(iii)** with no extension, renewal or other modification;
- iv. Funded Debt of the Issuer which is subordinated in right of payment to the Bond pursuant to subordination provisions substantially as set forth in **Schedule 5(a)(iv)** hereto;
- v. indebtedness for loans permitted by Section 5(b) hereof; and
- vi. Indebtedness or liabilities, other than for money borrowed, incurred or arising in the ordinary course of business
- vii. Guarantors shall not, individually or jointly, be permitted to invest in real estate pertaining to the business, organization or operations of the Issuer.

- b. Permitted Investments. Purchase, or permit to exist investments in, stock or securities of, or make or permit to exist loans or advances to, or other investments in, or guarantee, endorse or otherwise become contingently liable for the obligations of any person, firm or corporation, except:

- i. investments in direct obligations of the United States government;
- ii. certificates of deposit issued by banks having capital and surplus aggregating not less than \$100,000,000;
- iii. if so permitted by law, savings deposits in national banks and federal savings and loan associations having capital stock and surplus aggregating not less than \$100,000,000, provided that the aggregate of all such savings deposits at

any one bank or savings and loan association shall not exceed \$150,000.00 at any time; or

- iv. other loans, advances or investments not otherwise permitted by this Section 5(b) made after the Closing Date, provided that the aggregate amount of all such investments at any time outstanding shall not exceed \$50,000.00.
- c. Subordination of Claims. Subordinate or permit to be subordinated any claim against, or obligation of another person, firm or corporation held or owned by it to any other claim against, or obligation of, such other person, firm or corporation.
- d. Sale of Assets. Sell, lease or otherwise dispose of, all or any substantial part of its assets. Sales of inventory in the ordinary course of business is excepted from this paragraph.
- e. Merger and Consolidation. Merge or consolidate with any corporation or entity without the prior written consent of Investor. In the event the Investor does not consent to a merger or consolidation otherwise prohibited by this subsection (e) within 30 days after written request from the Issuer for such consent, and at the time of requesting such consent the Issuer has a bona fide agreement for merger or consolidation contingent upon obtaining such consent or prepayment of the Bond, then the Issuer may prepay the outstanding Bond in whole, simultaneously with the consummation of such transaction, upon 30 days prior written notice to the Investor. Any prepayment made hereunder shall be made together with interest accrued to the date of such prepayment, plus a prepayment premium, if any, equal to the applicable premium specified herein.
- f. Maintenance of Present Business. Substantially alter the nature of the business in which it is presently engaged, nor purchase or invest, directly or indirectly, in any substantial amount of assets or property other than assets or property useful and to be used in its business as presently conducted, or without prior written consent of Investor, make changes in the management structure or management agreement, if any.
- g. Transactions with Affiliates. Enter into any transaction including, without limitation, any purchase, acquisition, lease of property, sale, loan, advance, or similar dealing with an Affiliate without the prior written consent of the Investor.
- h. Permitted Liens. Create, assume, or suffer to exist any mortgage, pledge, encumbrance, lien, security interest or charge of any kind whether presently effective, springing, conditional or contingent (including any charge upon property purchased under conditional sales contracts, title retention agreements or other purchase money security interests or under leases which constitute Capitalized Lease Obligations) upon any of its property or assets, whether now owned or hereafter acquired, except liens securing the Bond, and:
 - i. liens securing indebtedness permitted by Section 5(a)(i) and presently existing liens described in **Schedule 5(h)** securing existing indebtedness permitted by Section 5(a)(iii) hereof;
 - ii. liens for taxes not yet due or which are being contested in good faith by appropriate proceedings promptly initiated and diligently conducted in accordance with Section 4(f) hereof;
 - iii. other liens, charges, or encumbrances incidental to the conduct of its business or the ownership of its property which were not incurred in connection with borrowing of money or the obtaining of advances or credit and which do not in the aggregate materially detract from the value of its property or materially impair the use thereof in the operation of the business; and
 - iv. liens imposed by law in favor of mechanics, repairmen, carriers or warehousemen for sums not yet due or which are being contested in good faith by appropriate proceedings promptly initiated and diligently conducted, if such reserve or other appropriate provision, if any, as required by GAAP shall been made therefor.

- i. Distribution Restrictions. Declare or pay any dividends, purchase or otherwise acquire for value any of its capital stock now or hereafter outstanding, or make any distribution of assets to its stockholders, members or general partners as such, provided, however, the Issuer may: (i) declare and pay dividends and distributions payable in capital stock; (ii) purchase or otherwise acquire capital stock of the Issuer with the proceeds received from the issuance of new capital stock; (iii) pay redemptions, dividends or distributions in an amount not to exceed, in the aggregate, 50% of the Issuer's immediately preceding fiscal year's Net Income; (iv) pay dividends or distributions which are immediately reinvested in the Issuer; (v) so long as the Issuer first provides such supporting documentation as the Investor may request with respect to any fiscal year of the Issuer, the Issuer may pay aggregate cash dividends/distributions, during such fiscal year in an amount not to exceed the amount necessary for the stockholders of the Issuer to pay their federal and state income taxes on such stockholder's allocable share of the taxable income of the Issuer for such taxable year or fiscal year, as applicable ("**Tax Distributions**"); and (vi) pay additional distributions in an amount reasonably acceptable to Investor, provided however, that immediately prior to the proposed payment of any dividends or distributions permitted by this subsection 5(i), or after giving effect thereto, no Default or Event of Default shall exist.
- j. Capital Expenditures. Make or permit to be made Capital Expenditures in excess of \$300,000.00 in the aggregate in any twelve-month period without the consent of the Investor, such consent not to be unnecessarily withheld.
- k. Sale of Accounts. Sell with recourse, discount or otherwise sell any notes, loan receivable, bond receivable or accounts receivable.
- l. Sale and Lease-Back. Enter into any arrangement with any bank, insurance company or other lender or investor or to which such lender or investor is a party providing for the leasing by the Issuer of real or personal property which has been or is to be sold or transferred by the Issuer to such lender or investor or to any person to whom funds have been or are to be advanced by such lender or investor on the security of such property or rental obligations of the Issuer.
- m. Change in Management or Control. Make any change: (i) of Chief Executive Officer or Chief Financial Officer of the Issuer, without written notice to the Investor or within thirty (30) days after any such change; (ii) in control of the Issuer; or (iii) in ownership of the Issuer other than transfers of not more than 20% of the issued and outstanding capital stock in the Issuer to existing shareholders or employees of the Issuer.
- p. Additional Covenants. In addition to the covenants set forth in this Section 5 the Issuer covenants and agrees as set forth to the additional Covenants as follows, if any:
 - i. Sale of Real Estate. Issuer shall not sell, lease or otherwise dispose of, any real estate, including but not limited to real estate located in the Southwest Quarter of the Southeast Quarter of Section 22, Township 10 South, Range 17 East of the Boise Meridian, Twin Falls County, Idaho, with a street address of Route 2, 837 Madrona Street, Twin Falls, ID 83301, without the prior written consent of Investor.
 - ii. Bond to Mortgaged Property Ratio. Issuer shall not permit the Bond to value of the Mortgaged Property ratio to exceed 80% at any time. If the Bond to value ratio exceeds 80%, Issuer must pay the Bond balance down in a sufficient amount to maintain a Bond to value ratio of less than 80%. If a pay down is required on the Bond, this pay down will be coordinated with the Issuer's annual prepayment date. However, collateral valuation shall be calculated annually on the anniversary date of the Bond. If additional principal reductions are necessary to maintain the 80% overall Bond to Mortgaged Property valuation, issuers shall be required to make such principal reductions.
 - iii. Gravel Extraction Limitation. Issuer shall not permit the amount of gravel extracted annually from the Crystal Springs, Old Hansen, New Hansen and

Rock Creek Gravel Pits to exceed an aggregated total of 600,000 tons. If more than the permitted 600,000 tons is extracted from these four gravel pits in one year, Issuers shall pay Investor \$0.50/ton for each ton extracted over this limit. Issuers shall be required to submit gravel extraction/depletion reports semi-annually. The measurement for the annual restriction on extraction will be measured as of December 31 each year during the term of the Bond.

6. Conditions Precedent. The obligations of the Investor to purchase the Bond, as provided in Section 2(a) hereof, shall be subject to the satisfaction, on or before the Closing Date, of the following conditions.

- a. The representations and warranties contained in Section 3 hereof shall be true and correct as of the Closing Date; the Issuer shall not be in default with respect to any of the provisions hereof, and there shall exist no event which, with the passage of time or the giving of notice, or both, would constitute such a default; and the Issuer shall have delivered to the Investor a certificate signed by a responsible officer of the Issuer to such effects.
- b. The Issuer shall have provided to the Investor a commitment by an insurer satisfactory to the Investor to issue a mortgagee's policy of title insurance on a form acceptable to the Investor and in an amount not less than the aggregate principal amount of the Bond covering each parcel of Mortgaged Property, provided that such commitment or the latest endorsement thereof shall show the status of title to the Mortgaged Property as of the Closing Date, and provided further that in no event shall such commitment for title insurance
 - i. reflect any easements, restrictions, claims, encumbrances or title defects other than encumbrances permitted by Section 5(h) and such other matters as are acceptable to the Investor, or
 - ii. except from coverage of the policy any
 1. lien, or right to a lien for services, labor or material furnished on or to the Mortgaged Property (regardless of whether such lien has been recorded prior to the date of issuance of the title insurance policy),
 2. easements, restrictions or other encumbrances which a survey would show or
 3. rights of parties in possession.
- c. The Issuer shall have provided to the Investor a survey of the Mortgaged Property, including real estate owned in fee and all appurtenant easements, certified to the Investor within (30) days prior to the Closing Date by a surveyor or land engineer licensed in the state in which the Mortgaged Property is located, showing the location of all points and lines referred to in the legal description, the location of any existing improvements in compliance with all set back requirements, and the location of all utilities and easements, which survey shall reflect no easements, restrictions, claims, encumbrances or title defects other than encumbrances permitted by Section 5(h) and such other matters as are acceptable to the Investor.
- d. The Investor shall have received a Uniform Commercial Code Search against the Issuer from every state the Investor may request, as of a date no more than fifteen days prior to the Closing Date, certified by a reporting service satisfactory to the Investor, and disclosing no security interests other than those permitted under Section 5(h) of this Agreement, and a bankruptcy search and judgment search against the Issuer from every state the Investor may request, as of a date no more than fifteen days prior to the Closing Date, certified by a reporting service satisfactory to the Investor, and disclosing no bankruptcy filings, voluntary or involuntary, or judgments filed against Issuer.
- e. The Issuer has not suffered a change having a Material Adverse Effect in financial condition, nor shall there exist (except for the matters set forth on **Schedule 5(h)**

hereto) any material action, suit or proceeding pending, or to the knowledge of the Issuer threatened, against the Issuer which, if decided adversely to the Issuer, would have a Material Adverse Effect upon the Issuer or upon any of its businesses or properties, nor shall there have occurred any development in the matters set forth on **Schedule 3(d)** hereto which cause the Investor, after consultation with counsel, to determine, in their sole discretion reasonably exercised, that there exists a reasonable likelihood that any of such matters will be decided adversely to the Issuer or otherwise have a Material Adverse Effect upon the Issuer or upon any of its businesses or properties.

- f. Any other conditions set forth in any separate writing between the Issuer and the Investor with respect to the purchase of the Bond shall have been satisfied.
- g. All proceedings to be taken in connection with the transaction contemplated by this Agreement and all documents incident thereto shall be satisfactory in form and substance to the Investor and their counsel and the Investor shall have received copies of all documents which the Investor may reasonably request.
- h. The Investor shall have received the following, in form and substance satisfactory to the Investor:

- (a) this Agreement duly executed by the Issuer;
- (b) the Bonds duly executed by the Issuer;
- (c) the Mortgage, fully executed and notarized, granting a first priority lien on the Mortgaged Property and any improvements thereon;
- (d) the Security Agreement duly executed by the Issuer;
- (e) the Guaranty duly executed by the Guarantors;
- (f) a completed environmental assessment of the Mortgaged Property acceptable to Investor indicating that there are no environmental issues affecting the Mortgaged Property.
- (g) a completed flood search and certification on the Mortgaged Property indicating the Mortgaged Property is not located in a flood plain.
- (h) Issuer has submitted all entity documents of Issuer and all amendments thereto to Investor as reasonably required by Investor;
- (i) full disclosure of personal financial information, including, but not limited to the 2006 tax returns, of the Guarantors must be provided to the Investor prior to closing;
- (j) proof satisfactory to Investor that all required insurance has been obtained and all insurance requirements have been met by Issuer;
- (k) Issuer has provided Investor with complete and correct copies of any and all leases and related amendments to said leases relating to leases of facilities on the Mortgaged Property;
- (l) Issuer shall have provided to the Investor subordinations of all intercompany transaction between Issuers on forms satisfactory to the Investor;

(m) The United States Department of Agriculture, ("USDA"), shall have committed to provide at least a 70% guaranty of the Bond under the USDA guaranty programs;

(n) Issuer shall have provided to Investor evidence of all reclamation plans, mining permits, and bonding for all gravel pits.

(o) Issuer shall provide to Investor a copy of the purchase agreement for the real estate located in the Southwest Quarter of the Southeast Quarter of Section 22, Township 10 South, Range 17 East of the Boise Meridian, Twin Falls County, Idaho, with a street address of Route 2, 837 Madrona Street, Twin Falls, ID 83301, without the prior written consent of Investor.

- i. In addition to the conditions precedent set forth in this Section 6, the Investor's obligations to purchase the Bond are subject to the additional Conditions Precedent as follows, if any: None.

7. Default. Each of the following events shall be an "Event of Default":

- a. the Issuer shall fail to pay any installment of principal or interest, fees, expenses, charges or other amounts payable hereunder or under the Bond or any Bond Security Document or to make any deposit of funds required under this Agreement when due; or
- b. any representation or warranty made by the Issuer, or any of its officers or directors/members under or in connection with this Agreement, the Bond or any Bond Security Document shall prove to have been incorrect in any material respect when made; or
- c. the Issuer or any Guarantor defaults in any payment on any other obligation for borrowed money beyond any period of grace provided with respect thereto or in the performance of any other agreement, term or condition contained in any agreement under which any such obligation is created if the effect of such default is to cause, or permit the holder or holder of such obligation (or a trustee on behalf of such holder or holder) to cause, such obligation to become due prior to its stated maturity; or
- d. an order for relief shall be entered in any Federal Bankruptcy proceeding in which the Issuer or any Guarantor is the debtor; or bankruptcy, receivership, insolvency, reorganization, relief, dissolution, liquidation or other similar proceedings shall be instituted by or against the Issuer or any Guarantor or all or any part of the property of the Issuer or any Guarantor under the Federal Bankruptcy Code or any other law of the United States or any bankruptcy or insolvency law of any state of competent jurisdiction; or
- e. the Issuer or any Guarantor shall have become insolvent or unable to pay its debts as they mature, cease doing business as a going concern, make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, or if a trustee, receiver or liquidator shall be appointed for the Issuer or for any substantial portion of the assets of the Issuer or any Guarantor; or
- f. default shall be made in the performance or observance of any covenant contained in Sections 4 or 5 of this Agreement; or
- g. default shall be made in the performance or observance of any of the other terms, covenants or conditions of this Agreement and such default shall continue for a period of 30 days after written notice thereof shall have been given by the Investor to the Issuer; or
- h. final judgments or orders for the payment of money shall be rendered against the Issuer or any Guarantor and such judgments or orders shall remain unsatisfied,

unstayed and unbonded after the date such judgments or orders are required to be paid; or

- i. there shall occur any Event of Default under any Bond Security Document; or
- j. any statement or report furnished by the Issuer to the Investor under or in connection with this Agreement, the Bond or any Bond Security Document is false in any material respect; or
- k. the Investor, in good faith, deems itself insecure or determines that the prospect of payment of the Bond or the prospect of performance of this Agreement or any other instrument securing the Bond or relating to it is impaired.

8. **Remedies.** Upon the occurrence of an Event of Default, the Investor may, at its option, by notice to the Issuer, declare the Bond and any other obligation of Issuer owed to Investor to be forthwith due and payable and thereupon the Bond and any other obligations of Issuer owed to Investor shall be and become due and payable, together with interest accrued thereon and the premium, if any, specified in the Bond (whether or not prepayment would then be permitted by the Bond); provided, however, that if an Event of Default results from the filing of a voluntary or involuntary petition in any bankruptcy proceeding in which the Issuer is the debtor, the Bond and any other obligations of Issuer owed to Investor thereupon shall immediately become due and payable, with interest accrued thereon and the premium, if any, specified in the Bond or other such obligations (whether or not prepayment would then be permitted by the Bond, without any notice from the Investor or otherwise), or Investor may pursue all rights and remedies available under each or any of the Bond Security Documents, as well as any rights and remedies at law, or in equity, which it deems advisable for the protection of its interests to collect and enforce payment, and such rights and remedies shall be cumulative. The Issuer shall pay all expenses, court costs and reasonable attorneys' fees incurred in connection with or arising out of any default hereunder.

9. **Proceeds.** The proceeds from any disposition of the Collateral pursuant to Section 9 hereof shall be used to satisfy the following items:

- a. The expenses of taking, removing, storing, repairing, holding, maintaining and selling the Collateral and otherwise enforcing the rights of Investor under this Bond Purchase Agreement or the other Bond Security Documents, including any legal costs and reasonable attorney's fees and including but not limited to all such costs incurred by Investor.
- b. The expense of liquidating or satisfying any liens, security interests, or encumbrances on the Collateral which may be prior to the security interest of Investor that Investor elects to satisfy.
- c. Any unpaid fees, accrued interest and other sums due Investor under this Bond Purchase Agreement or under any of the Bond Security Documents, and then the unpaid principal amount of the Bonds.
- d. Any other obligations.

10. **Payments on and Registration and Transfer of Bond.** The Issuer agrees that it will make payment of the principal of, premium, if any and interest on the Bond by wire transfer of immediately available federal funds with sufficient information to identify the source and application of funds to the Investor in accordance with the wire transfer instructions provided the Issuer by the Investor, or to such other accounts or in such other manner as may from time to time be designated by the Investor, without presentment of the Bond and without the rendering of any bills therefor. The Issuer shall keep at its principal office a register in which

the Issuer shall provide for the registration of the Bond and of transfers of the Bond (the "**Bond Register**"), it being understood that a pledge of the Bond for purposes of securing an obligation of the holder of the Bond shall not constitute such a transfer unless the Bond subject thereto is actually conveyed to another party in connection with the foreclosure of or other realization of rights under such pledge. Upon transfer of the Bond, the holder and the transferee shall jointly notify the Issuer in writing of such transfer, whereupon the Issuer will register such transfer in the Bond Register. The Issuer may treat the person in whose name the Bond is registered on the Bond Register as the owner of the Bond for the purpose of receiving payment of principal of and interest on the Bond and for all other purposes.

11. **Notices.** Any notice or other communication required by this Agreement must be in writing and will be deemed given or delivered when delivered by hand or when deposited in the United States mail, certified or registered, return receipt requested, postage prepaid and properly addressed. The proper address of the Issuer shall be the last address of the principal office of the Issuer in Investor's records. The proper address of the Investor is indicated on the first page of this Agreement. The address of a party to whom notices or other communications is to be mailed may be changed from time to time by giving written notice to all other parties to this Agreement.
12. **Modification.** No modification, amendment, consent, or waiver of any provision of this Agreement, the Bond, or any Bond Security Document, or any related document shall be effective unless in writing and signed by the party against whom enforcement is sought, and then shall be effective only as to the specific instance and for the specific purpose for which given.
13. **Waiver.** The Issuer and other parties to this transaction (except the Investor), and each of them, whether principal, surety, guarantor, endorser, or other party, agree to be jointly and severally bound and, further, waive demand, protest, and notice of demand, protest, or nonpayment, and agree that the liability of each shall be unconditional without regard to the liability of any other party and shall not be affected by any indulgence, extension or extensions of time, renewal, waiver, release of any party or of any Collateral, or other modifications granted or consented to by the Investor. The rights and powers granted to the Investor hereunder shall not, nor shall any provision hereof, be waived except in writing signed by the Investor, and the provisions hereof shall not be modified, limited, or waived by any prior or subsequent course of dealing between the parties or between the Issuer and third parties or by any usage of trade. To the extent the Investor's funding source gives or has given value to the Investor in reliance hereon the Issuer hereby waives any and all other defenses or right of offset which the Issuer may or might have against the Investor when the Bond is held by the Investor's funding source, its collateral custodian, or the successors or assigns of either.
14. **Expenses.** The Issuer agrees, whether or not the purchase of the Bond herein contemplated shall be consummated, to pay and save the Investor harmless against liability for the payment of all out-of-pocket expenses arising in connection with this transaction including any documentary stamp taxes (and including interest and penalties, if any), which may be determined to be due and payable with respect to the execution and delivery of the Bond, and the reasonable fees and expenses of counsel to the Investor. The Issuer also agrees to pay, and to save the Investor harmless against liability for the payment of, the reasonable fees and expenses of counsel to the Investor in connection with any documentation and related services arising after the Closing Date in connection with the preparation of waivers or amendments of any provisions of this Agreement, the Bond, or Bond Security Documents. In addition, the Issuer agrees to pay, and to save the Investor harmless against, all brokerage or finders fees incurred in the transaction contemplated by this Agreement.

15. **Investment Purpose.** The Investor represents that the acquisition of the Bond by it will be for investment and not with a view to resale in connection with any distribution thereof, it being understood, however, that the disposition of the property of the Investor shall at all times be within its control.
16. **Successors and Assigns.** All covenants and agreements in this Agreement and the Bond contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not; however, Issuer may not assign its interests in this Agreement, the Bond or the Bond Security Documents to any other party without Investor's prior written consent.
17. **Survival of Representations and Warranties.** All representations and warranties contained herein or made in writing by the Issuer in connection herewith shall survive the execution and delivery of this Agreement and of the Bond.
18. **Severability of Provisions.** Any provision of this Agreement, the Bond, or the Bond Security Documents which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.
19. **Governing Law.** This Agreement and the Bond shall be governed by, construed and enforced in accordance with the internal laws of the State of Minnesota without regard to its conflicts of laws principles.
20. **Consent to Jurisdiction.** The Issuer hereby irrevocably submits to the jurisdiction of any Minnesota state court or federal court over any action or proceeding arising out of or relating to this Agreement, the Bond and any instrument, agreement or document related hereto or thereto, and the Issuer hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in a Idaho state court or federal court. The Issuer hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of an action or proceeding. The Issuer irrevocably consents to the service of copies of the summons and complaint and any other process which may be served in any such action or proceeding by the mailing of copies of such process to Issuer at the last address for Issuer in Investor's records. The Issuer agrees that a final judgment in any action or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
21. **WAIVER OF JURY TRIAL.** THE ISSUER AND THE INVESTOR HEREBY IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE BOND OR ANY BOND SECURITY DOCUMENT TO WHICH IT IS A PARTY OR ANY INSTRUMENT OR DOCUMENT DELIVERED THEREUNDER.
22. **Power of Attorney.** Issuer hereby irrevocably appoints the Investor as Issuer's attorney-in-fact to act for the Issuer with full authority in the place and name of the Issuer to take any action and to execute any instrument which the Investor may deem advisable to accomplish the purposes of this Agreement, the Bond Security Documents and the Bond, including, without limitation, the authority (a) to endorse, collect, sue for, compromise, and receive any drafts, instruments, documents, or moneys due in connection with the Collateral; (b) to file any claims or take any action or institute any proceedings which the Investor may deem desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Investor with respect to any of the Collateral; (c) to disburse funds including paying insurance premiums,


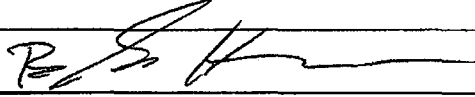
taxes, liens, and other costs of preserving the Collateral; and (d) to establish, determine priority of, perfect, continue as perfected, preserve, enforce, or terminate the Investor's rights and interests under this Agreement, the Bond Security Documents or the Bond. The Investor may charge its expenses of doing so to the Bond and the Issuer shall pay them upon demand with interest from the date each expense is incurred at the rate in effect on the date each expense is incurred.

23. **Captions.** The captions in this Agreement are for convenience only and shall not be considered in the interpretation of any of the provisions hereof.
24. **Counterparts.** This Agreement may be executed in any number of counterparts or facsimile counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute but one and the same agreement.
25. **Entire Agreement.** This Agreement together with the Bond, the Bond Security Documents and the other documents referred to herein or therein embody the final, entire agreement by and among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no unwritten oral agreements among the parties thereto.

*****THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK*****

ISSUER:


Gordon Paving Co., Inc., an Idaho Corporation
Northwest Sand & Gravel, Inc., an Idaho Corporation
Blackrock Land Holdings.LLC, an Idaho Limited Liability Company

By 	By 
Name: Brian Hansen, in his capacity as Secretary of Gordon Paving Company, Inc., Secretary of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, LLC	Name: Brandon Hansen, in his capacity as Vice President of Gordon Paving Company, Inc., Vice President of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, LLC

The foregoing Agreement is accepted as of the date first above written.

INVESTOR:

Agri-Access

By 
Name: Tamara Knight
Title: Loan Administrator

**Schedule 1.0
Equipment**

2007 Komatsu WA500-6 Wheel Loader S 3A92288;
200 CWS WA 500-6 Bucket, Pin on S #702705;
2007 Komatsu D155AX-6 Crawler Dozer S # 80188; and
41556 Secondary Closed Circuit Plant S #4156-538

**Schedule 3(d)
Legal Proceedings**

Issuer must complete, if any.

**Schedule 3(e)
Financial Statements**

Gordon Paving Company, Inc.

June 30, 2007 and 2006 Accountant Reviewed Interim Statement
2006 Federal Tax Return
December 31, 2006 and December 31, 2005 Accountant Reviewed Years Ended Statement
2005 Federal Tax Return
2004 Federal Tax Return

Northwest Sand & Gravel, Inc.

June 30, 2007 and 2006 Accountant Reviewed Interim Statement
2006 Federal Tax Return
December 31, 2006 and 7-month ended December 31, 2005 Accountant Reviewed Years Ended Statement
2005 Federal Tax Return (for 7 months as company began 6/1/2005)

Blackrock Land Holdings, LLC

June 30, 2007 statement of Assets & Liabilities
2006 Federal Tax Return
December 31, 2006 Statement of Assets, Liabilities and Equity – Estimated Current Values –
Accountant Compiled Statement

Brian & Holly Hansen

Personal Financial Statement, Accountant Compilation, dated June 30, 2007
2006 Federal Tax Return
2005 Federal Tax Return
2004 Federal Tax Return
2003 Federal Tax Return

Brandon & Nicole Hansen

Personal Financial Statement, Accountant Compilation, dated June 30, 2007
2006 Federal Tax Return
2005 Federal Tax Return
2004 Federal Tax Return
2003 Federal Tax Return

**Schedule 3(g)
Intellectual Property**

Issuer must complete, if any.

Schedule 5(a)(iii)
Permitted Indebtedness and Repayment Terms and Schedule

Working on the List
We must list any permitted debt other than the Bond.

Schedule 5(a)(iv)
Subordination Provisions for Funded Debt of the Issuer

Issuer shall subordinate all intercompany transactions between Issuers to the Bond on forms satisfactory to the Investor;

Schedule 5(i)
Permitted Liens

Working on the List
List permitted liens, if any.

Schedule 5(j)
Transactions to be completed

Working on List

List transactions to be completed, if any.

**FIRST AMENDMENT TO
BOND PURCHASE AGREEMENT**

This First Amendment to Bond Purchase Agreement, ("First Amendment"), is entered in to this 21st day of January, 2008 by and between, Gordon Paving Co., Inc., an Idaho corporation, Northwest Sand & Gravel, Inc., an Idaho Corporation, and Blackrock Land Holdings, LLC, an Idaho Limited Liability Company, collectively as the **Issuer**, and Agri-Access®, a division of and trademark of AgStar Financial Services, ACA, a federally chartered corporation, as the **Investor**.

WHEREAS, on December 10, 2007 the **Issuer**, entered in to a Bond Purchase Agreement with the **Investor**; and

WHEREAS, the Disbursement Date(s) of Bond proceeds as set forth in the Bond Purchase Agreement was inadvertently incorrectly stated as being the date of Closing of the Bond which was December 10, 2007 while the correct Disbursement Date(s) was intended to be December 26, 2007; and

WHEREAS, the Issuer and Investor now desire to amend the Bond Purchase Agreement to correct that misstatement of the Disbursement Date(s).

NOW THEREFORE, the Issuer and Investor hereby agree to amend the Bond Purchase Agreement as follows:

1. Section 2 (b) of the Bond Purchase Agreement dated December 10, 2007 by and between Gordon Paving Co., Inc., an Idaho corporation, Northwest Sand & Gravel, Inc., an Idaho Corporation, and Blackrock Land Holdings, LLC, an Idaho Limited Liability Company, collectively as the **Issuer**, and Agri-Access®, a division of and trademark of AgStar Financial Services, ACA. a federally chartered corporation, the **Investor**, is hereby amended to read as follows: Disbursements. The Purchase Price will be disbursed to the Issuer against delivery of the Bond on December 26, 2007.

All other terms and conditions of the Bond Purchase Agreement shall remain in full force and effect without change except as set forth in this First Amendment.

This First Amendment is entered in to and effective the on the date stated above.

ISSUER:

Gordon Paving Co., Inc., an Idaho Corporation

Northwest Sand & Gravel, Inc., an Idaho Corporation

Blackrock Land Holdings.LLC, an Idaho Limited Liability Company

By: 

Name: Brian Hansen, in his capacity as
Secretary of Gordon Paving Company,
Inc., Secretary of Northwest Sand &
Gravel, Inc., Member of Blackrock Land
Holdings, LLC

By: 

Name: Brandon Hansen, in his capacity as
Vice President of Gordon Paving Company,
Inc., Vice President of Northwest Sand &
Gravel, Inc., Member of Blackrock Land
Holdings, LLC

INVESTOR:

Agri-Access®

By: 

Shawn C. Miller

Title: Director Program Credit & Operations

**SECOND AMENDMENT TO
BOND PURCHASE AGREEMENT**

This Second Amendment to Bond Purchase Agreement, ("Second Amendment"), is entered in to this 30th, day of April, 2008 by and between, Gordon Paving Co., Inc., an Idaho corporation, Northwest Sand & Gravel, Inc., an Idaho Corporation, and Blackrock Land Holdings, LLC, an Idaho Limited Liability Company, collectively as the **Issuer**, and Agri-Access®, a division of and trademark of AgStar Financial Services, ACA, a federally chartered corporation, as the **Investor**.

WHEREAS, on December 10, 2007 the **Issuer**, entered in to a Bond Purchase Agreement with the **Investor**; and

WHEREAS, the definition of Minimum Fixed Charge Coverage Ratio in Section 1 of the Bond Purchase Agreement is incorrect and should be as stated in Section 4. j. of the Bond Purchase Agreement; and

WHEREAS, the heading in Section 4. j. of the Bond Purchase Agreement should read "Minimum Fixed Charge Coverage Ratio" not Fixed Charge Coverage Ratio as it was originally drafted; and

WHEREAS, the reference in Section 19. of the Bond Purchase Agreement to governing law should read the State of Idaho not the State of Minnesota as it was originally drafted; and

WHEREAS, the reference in Section 20. of the Bond Purchase Agreement to jurisdiction should read the State of Idaho not the State of Minnesota as it was originally drafted; and

WHEREAS, Schedule 5(a)(iii) incorrectly listed Permitted Indebtedness under the Bond Purchase Agreement; and

WHEREAS, Schedule 5(i) is mislabeled and incorrectly listed Permitted Liens under the Bond Purchase Agreement; and

WHEREAS, the Issuer and Investor now desire to amend the Bond Purchase Agreement to correct that above matters;

NOW THEREFORE, the Issuer and Investor hereby agree to amend the Bond Purchase Agreement as follows:

1. The definition of Minimum Fixed Charge Coverage Ratio in Section 1 of the Bond Purchase Agreement is hereby amended and restated in its entirety to read as follows: "Minimum Fixed Charge Coverage Ratio" shall be defined as net income before taxes plus interest expense plus depreciation plus depletion plus amortization divided by interest expenses plus current portion long term debt plus capital expenditures plus taxes plus distributions. This ratio shall be calculated on a consolidated basis. Investor shall maintain a Minimum Fixed Charge Coverage Ratio of 1.15.
2. Section 4.j(i) is hereby amended and restated in its entirety to read as follows:
Minimum Fixed Charge Coverage Ratio. Maintain a Minimum Fixed Charge Coverage Ratio of 1.15 to 1. This ratio shall be defined as net income before taxes plus interest expense plus depreciation plus depletion plus amortization divided by interest expenses plus current portion long term debt plus capital expenditures plus taxes plus distributions. This ratio shall be calculated on a consolidated basis.
3. Section 19. of the Bond Purchase Agreement is hereby amended and restated in its entirety to read as follows: "19. **Governing Law**. This Agreement and the Bond shall be governed by, construed and enforced in accordance with the internal laws of the State of Idaho without regard to its conflicts of laws principles."
4. Section 20. of the Bond Purchase Agreement is hereby amended and restated in its entirety to read as follows: "20. **Consent to Jurisdiction**. The Issuer hereby irrevocably submits to the jurisdiction of any Idaho state court or federal court over any action or proceeding arising out of or relating to this Agreement, the Bond and any instrument, agreement or document related hereto or thereto, and the Issuer hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in a Idaho state court or federal court. The Issuer hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of an action or proceeding. The Issuer irrevocably consents to the service of copies of the

summons and complaint and any other process which may be served in any such action or proceeding by the mailing of copies of such process to Issuer at the last address for Issuer in Investor's records. The Issuer agrees that a final judgment in any action or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law."

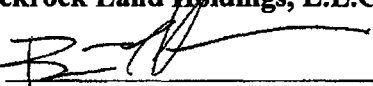
5. Schedule 5(a)(iii) of the Bond Purchase Agreement is hereby amended and restated in its entirety to read as stated in the attached Schedule 5(a)(iii).
6. Schedule 5(i) of the Bond Purchase Agreement is hereby amended and restated to be labeled as Schedule 5(h) and is further amended and restated in its entirety to read as stated in the attached Schedule 5(h).

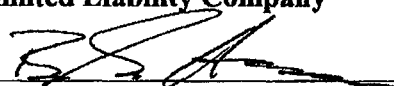
All other terms and conditions of the Bond Purchase Agreement shall remain in full force and effect without change except as previously amended and as set forth in this Second Amendment.

This Second Amendment is entered in to and effective the on the date stated above.

ISSUER:

Gordon Paving Company, Inc., an Idaho Corporation
Northwest Sand & Gravel, Inc., an Idaho Corporation
Blackrock Land Holdings, L.L.C., an Idaho Limited Liability Company

By: 
Name: Brian Hansen, in his capacity as
Secretary of Gordon Paving Company,
Inc., Secretary of Northwest Sand &
Gravel, Inc., Member of Blackrock Land
Holdings, LLC

By: 
Name: Brandon Hansen, in his capacity as
Vice President of Gordon Paving Company,
Inc., Vice President of Northwest Sand &
Gravel, Inc., Member of Blackrock Land
Holdings, LLC

INVESTOR:

Agri-Access®

By: _____
Title:

Schedule 5(a)(iii)
Permitted Indebtedness and Repayment Terms and Schedule

<i>Note Payable</i>	<i>Balance</i>	<i>Monthly Payment</i>	<i>Interest Rate</i>
McFinney Agri-Finance, LLC	\$1,050,000.00		
DC Truck Finance	\$35,600.00		
DC Truck Finance	\$36,300.00		
Kubota Credit	\$14,700.00		
Komatsu Credit	\$78,000.00		
Wells Fargo Equipment Finance	\$251,600.00		
Wells Fargo Equipment Finance	\$137,300.00		
Wells Fargo Equipment Finance	\$67,600.00		
GMAC	\$3,900.00		
GMAC	\$2,800.00		

Schedule 5(h)
Permitted Liens

UCC	Secured Party
200710283640	Komatsu Financial Limited Partnership
B200409613047	Citicapital Commercial Corporation
B200509868615	Harry Clifford Dehaan
B200509873750	The Cit Group/Equipment Financing, Inc
B200509876779	Wells Fargo Equipment Finance, Inc
B200509881672	OK Auto Systems, Inc
B200509883176	Caterpillar Financial Services Corporation
B200509913311	Wells Fargo Equipment Finance, Inc
B200509914005	Wells Fargo Equipment Finance, Inc
B200610040116	General Electric Capital Corporation
B200610064492	General Electric Capital Corp.
B200710256536	Wells Fargo Equipment Finance, Inc & The Cit Group/Equipment Financing, Inc
B200710297073	Kubota Credit Corporation, USA
B200610009946	Banc of America Leasing & Capital, LLC
B200610022832	Banc of America Leasing & Capital, LLC
B200610103154	Banc of America Leasing & Capital, LLC
B200610126102	Banc of America Leasing & Capital, LLC
B200309413741	Sunfirst Bank
B200710375527	McFinney Agri-Finance, LLC

**THIRD AMENDMENT TO
BOND PURCHASE AGREEMENT**

This Third Amendment to Bond Purchase Agreement, ("Third Amendment"), is entered in to this 22, day of September, 2010 by and between, Gordon Paving Co., Inc., an Idaho corporation, Northwest Sand & Gravel, Inc., an Idaho Corporation, and Blackrock Land Holdings, LLC, an Idaho Limited Liability Company, collectively as the **Issuer**, and Agri-Access®, a division of and trademark of AgStar Financial Services, ACA, a federally chartered corporation, as the **Investor**.

WHEREAS, on December 10, 2007 the **Issuer**, entered in to a Bond Purchase Agreement with the **Investor**; which was amended, on January 27, 2008 by the **Issuer** and **Investor** entering in to a First Amendment to Bond Purchase Agreement and which was further amended on April 30, 2008 by the **Issuer** and **Investor** entering in to a Second Amendment to Bond Purchase Agreement, (The Bond Purchase Agreement, First Amendment to Bond Purchase Agreement, and Second Amendment to Bond Purchase Agreement; are collectively referred to the "Bond Purchase Agreement") and

WHEREAS, Issuer and Investor wish to amend Section 5. g. of the Bond Purchase Agreement dealing with Transactions with Affiliates; and

WHEREAS, the Issuer and Investor now desire to amend the Bond Purchase Agreement to carry out the above stated wishes;

NOW THEREFORE, the Issuer and Investor hereby agree to amend the Bond Purchase Agreement as follows:

1. Section 5. g. of the Bond Purchase Agreement is hereby amended and restated in its entirety to read as follows:


"g. Transactions with Affiliates. Enter into any transaction including, without limitation, any purchase, acquisition, lease of property, sale, loan, advance, or similar dealing with an Affiliate, except as may be carried out in the normal course of Issuer's business and as may be properly reflected on Issuer's income statement, without the prior written consent of Investor."


All other terms and conditions of the Bond Purchase Agreement shall remain in full force and effect without change except as previously amended and as set forth in this Third Amendment.

This Third Amendment is entered in to and effective the on the date stated above.

ISSUER:

Gordon Paving Company, Inc., an Idaho Corporation
Northwest Sand & Gravel, Inc., an Idaho Corporation
Blackrock Land Holdings, L.L.C., an Idaho Limited Liability Company

By: 
Name: Brian Hansen, in his capacity as
Secretary of Gordon Paving Company,
Inc., Secretary of Northwest Sand &
Gravel, Inc., Member of Blackrock Land
Holdings, LLC

By: 
Name: Brandon Hansen, in his capacity as
Vice President of Gordon Paving Company,
Inc., Vice President of Northwest Sand &
Gravel, Inc., Member of Blackrock Land
Holdings, LLC

INVESTOR:

Agri-Access®

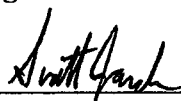

By: ~~AVP~~ Scott Jarch
Title: AVP Agri-Access

EXHIBIT B

Assn.	Branch #	CIF #	Bond Acct	Product Code
52	483	5603978	7616454400	3474

Gordon Paving Co., Inc.,
Northwest Sand & Gravel, Inc.,
and
Blackrock Land Holdings, LLC
Bond

PRINCIPAL AMOUNT: \$ 9,000,000.00

DATE OF ISSUE: 12/10/2007

MATURITY DATE: 12/10/2034

INVESTOR: Agri-Access®*

FOR VALUE RECEIVED, Gordon Paving Co., Inc., an Idaho Corporation, Northwest Sand & Gravel, Inc., an Idaho Corporation and Blackrock Land Holdings, LLC, an Idaho Limited Liability Company (the "**Issuer**") promises to pay to Agri-Access®,* a federally chartered corporation with principal offices at PO Box 7438, 3555 9th Street, Ste 400, Rochester MN, 55901 or to its registered holder (collectively, "**Investor**"), on or before the Maturity Date, **12/10/2034**, the principal sum of \$ 9,000,000.00 together with interest thereon from the date of disbursement, **12/26/2007**, (the "**Disbursement Date**"), pursuant to the terms and conditions of this Bond (this "**Bond**") and that certain Bond Purchase Agreement, of even date herewith, by and between Issuer and Investor (the "**Bond Purchase Agreement**"). All capitalized terms used in this Bond, but not otherwise defined herein, have the meaning ascribed to them in the Bond Purchase Agreement.

1. INTEREST: The annual rate of interest of the Bond is equal to 6.50% percent ("interest rate"). Interest hereunder shall be computed on the basis of a year of 360 or 365 days as Investor may determine, but charged for actual days principal is outstanding.

After the initial 7 years of the bond, the interest rate stated in this bond is subject to adjustment by the Investor or any subsequent holder of this Bond on each Rate Change Date. Effective on the 7-year anniversary date of the bond and each 7-years thereafter (each a "Rate Change Date"), the Variable Interest Rate shall change to a rate that shall be determined by adding a margin of 2.60% over the weekly average of the Federal Farm Credit Banks (FFCB) Funding Cost Index. The most current prior weekly average prior to the reprice date will be used. If the Index is no longer available, Lender will select a new index, which is based upon comparable information. Rates will be rounded the total to the nearest one-eighth of one percent.

Notwithstanding anything to the contrary in this Bond, Bond Purchase Agreement or any of the Bond Security Documents, Issuer shall not be required to pay unearned interest on this Bond, or ever be required to pay interest on this Bond at a rate in excess of the Maximum Rate, if any. If the effective rate of interest which would otherwise be payable under this Bond, Bond Purchase Agreement or any of the Bond Security Documents would exceed the Maximum Rate, if any, then the rate of interest which would otherwise be contracted for, charged, or received under

* Agri-Access® is a division and trademark of AgStar Financial Services, ACA. All references to Investor herein shall refer to AgStar Financial Services, ACA.

this Bond, Bond Purchase Agreement or any of the Bond Security Documents shall be reduced to the Maximum Rate, if any. For purposes of this Bond, "Maximum Rate" means the maximum nonusurious interest rate, if any, at any time, or from time to time, that may be contracted for, taken, reserved, charged or received under applicable state or federal laws.

2. DEFAULT INTEREST: Upon the occurrence of an Event of Default, any payment of principal or, to the extent permitted by applicable law, interest on this Bond not paid when due, whether by regular installment, upon prepayment, by acceleration, at maturity or otherwise, shall thereafter bear interest at a rate per annum equal to 2% in excess of the rate then applicable to this Bond, provided that in no event shall such rate exceed the Maximum Rate.

3. PAYMENT OF BOND: *Both principal and interest are due and payable in 324 monthly installments, beginning on the 1st day of the month in the month following closing and monthly thereafter on the first day of each month, and a final installment is due and payable on the Maturity Date. The initial monthly installments of principal and interest will be in the amount of \$58,999.95 and continue until such time as the interest rate is adjusted pursuant to the terms of this Bond.*

4. USE OF PROCEEDS. *The Issuer shall use the proceeds of the Bond to refinance debt currently held at Bank of America, Regal Bank and Rural Funding, LLC, pay costs and fees associated with this Bond, as well as fund the shop addition. The Issuer agrees that the proceeds of the Bond are to be used only for the purposes set forth in this Section 4.*

5. COLLATERAL: Payment of this Bond and the performance of all obligations of the Issuer under the Bond Purchase Agreement is secured by the Collateral described in the Bond Security Documents.

6. PREPAYMENT: The Issuer may prepay this Bond in whole or in part only in the amounts, upon the notice and subject to the conditions set forth herein and in the Bond Purchase Agreement. In the event the Issuer gives notice of any prepayment, such notice must specify the principal amount of this Bond to be prepaid, and the date of proposed prepayment; upon which such principal amount, together with accrued and unpaid interest thereon to the prepayment date and together with the applicable premium, if any, shall become due and payable on the prepayment date. Issuer may make advance payments in any amount and at any time. Notwithstanding any language in the Bond or any other document (collectively, "Bond") to the contrary, Issuer shall have no right to make advance payments of principal (hereinafter "prepayment") except for an optional prepayment of principal allowable annually only during the month of December (name of month) ("Optional Prepayment Month") in an amount equal to or less than 10% of the then outstanding principal balance. Prepayments other than those described above shall not be made without the Investor's consent, which the Investor will grant solely upon the terms and subject to the conditions hereinafter provided. In order to induce the Investor to accept any prepayment, the Issuer agrees to pay the Investor a prepayment fee for each such prepayment. A prepayment fee shall be due and payable for each such other prepayment made prior to 12/10/2014, (hereinafter "Fee End Date"). The prepayment fee shall be due and payable for each such advance payment made by the Issuer, whether made voluntarily or involuntarily, including any prepayment effected by the Investor's exercise of the acceleration clause in the Bond. (a) The prepayment fee due from the Issuer for each such advance payment shall be that amount calculated as follows: (i) compare the Initial Reference Rate, as defined herein, to the Final Reference Rate, as defined herein. If the Initial Reference Rate is less than or equal to the Final Reference Rate, the prepayment fee is zero, and (ii) if the Initial Reference Rate is greater than the Final Reference Rate, the prepayment fee shall be calculated as follows: (A) Calculate an amortization schedule using the Initial

Reference Rate, the amount of the principal prepayment, the prepayment date and the Bond maturity date. If the Fee End Date is prior to the Bond maturity date, assume for purposes of the calculation that all scheduled repayments of principal due on or after the Fee End Date are paid on the Fee End Date, (B) Calculate the interest payment(s) which will accrue on the advance payment(s) of principal through the Fee End Date at the Initial Reference Rate ("Initial Interest Amount(s)"), (C) Calculate the interest payment(s) which will accrue on the advance payment(s) of principal through the Fee End Date at the Final Reference Rate ("Final Interest Amount(s)"), (D) Calculate the "Differential Interest Amount" for each interest payment scheduled through the Fee End Date by subtracting the Final Interest Amount from the Initial Interest Amount for each such payment, and (E) the discounted present value of each Differential Interest Amount shall be calculated by using the Final Reference Rate as the discount rate. The prepayment fee shall be the sum of the discounted present value of each Differential Interest Amount. (b) The following terms shall have the meanings given below when used herein: (A) "Initial Reference Rate" means the annualized interest rate used by the Investor to obtain the Bond funds, which funds are being paid in advance of scheduled payment(s). (B) "Final Reference Rate" means the annualized interest rate Investor would allocate to fund a new bond, on the date of prepayment, with similar scheduled repayment of principal from the time of each such advance payment through the Fee End Date, assuming all scheduled repayments of principal due on or after the Fee End Date are paid on the Fee End Date. (C) Issuer shall not be charged a prepayment fee for advance payments of principal which, when considered on a cumulative basis, do not exceed ten percent of the then outstanding principal amount of the Bond and are directed by Issuer to be held for application on subsequently maturing installment payments in a funds held account which Investor, in its sole discretion, may establish and maintain.

7. MANNER OF PAYMENT: Issuer will pay the principal of and interest on this Bond by wire transfer of immediately available Federal funds to such accounts as shall be specified by the Investor, or in such other funds or in such other manner as may be mutually agreed upon by the Investor and the Issuer.

8. DISBURSEMENTS OF PRINCIPAL: Disbursement of the Principal Amount of this Bond will be made on the Disbursement Date(s) set forth in the Bond Purchase Agreement.

9. EVENTS OF DEFAULT: Events of Default under this Bond are as set forth in the Bond Purchase Agreement.

10. REMEDIES: Upon the occurrence of an Event of Default, the Investor may, at its option, exercise any or all of the rights and remedies set forth in the Bond Purchase Agreement. Investor may take any action or proceeding at law or in equity which it deems advisable for the protection of its interests to collect and enforce payment, and the Issuer shall pay all expenses, court costs and reasonable attorneys' fees incurred in connection with or arising out of any default hereunder.

11. MODIFICATION: No modification of this Bond, the Bond Purchase Agreement, the Bond Security Documents or any related document shall be enforceable unless in writing and signed by the party against whom enforcement is sought.

12. FINANCIAL INFORMATION: Investor, its agents, successors, or assigns may at any time directly or through a credit reporting agency verify or reverify any information, supplied by the Issuer to the Investor in the Issuer's bond application or otherwise provided to the Investor from any source in connection therewith. Investor, its agents, successors and assigns may report Issuer's name and information regarding this Bond and all of Issuer's past and future Bonds

to credit reporting agencies.

13. ASSIGNMENT OF BOND: The Investor may assign or otherwise transfer the Bond to any party including AgriBank, FCB and its successors, whether absolutely or as collateral security and whether in the ordinary course of business or otherwise, without Issuer's consent or approval. This Bond cannot be resold without registration under applicable Federal and State laws unless exemption from such registration requirements are then available.

14. UNAUTHORIZED DISPOSITIONS AND FALSE STATEMENTS: Issuer understands that it is a federal crime punishable by fine, imprisonment, or both to knowingly make any false statements in the Issuer's Bond application as applicable under the provisions of Title 18, United States Code, Section 1014. Issuer also understands that any unauthorized disposition of Collateral or the making of any false statement or report to the Investor in connection with a Bond could result in civil and criminal consequences to the Issuer as applicable under the provisions of Title 18, United States Code, Sections 658 and 1014.

15. PARTIES BOUND: All covenants and agreements in this Bond contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the Investor and the permitted assigns of Issuer whether so expressed or not. As provided in the Bond Purchase Agreement, this Bond is transferable only on the Bond Register of the Issuer, upon joint written notice to the Issuer of such transfer by the holder of this Bond and the transferee. The Issuer may treat the Investor or registered holder as the owner hereof for the purpose of receiving payment and for all other purposes.

16. GOVERNING LAW: This Bond and the Bond Purchase Agreement shall be governed by, construed and enforced in accordance with the internal laws of the State of Minnesota without regard to its conflicts of laws principles.

IN WITNESS WHEREOF, Issuer has executed this Bond as of the Date of Issue set forth above.

ISSUER:

Gordon Paving Co., Inc., an Idaho Corporation
Northwest Sand & Gravel, Inc., an Idaho Corporation
Blackrock Land Holdings.LLC, an Idaho Limited Liability Company

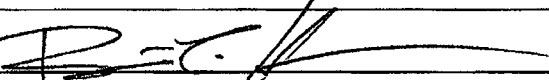
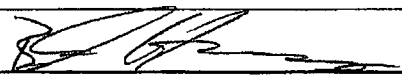
By 	By 
Name: Brian Hansen, in his capacity as Secretary of Gordon Paving Company, Inc., Secretary of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, LLC	Name: Brandon Hansen, in his capacity as Vice President of Gordon Paving Company, Inc., Vice President of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, LLC

EXHIBIT C

CASSIA COUNTY
RECORDED FOR:
CASSIA COUNTY ABSTRACT
3:05:35 pm 12-26-2007
2007-320086
NO. PAGES: 8 FEE: \$24.00
LARRY A. MICKELSEN
COUNTY CLERK
DEPUTY: VIKI

IDAHO OPEN-END MORTGAGE

No. 7616454400

TOTAL PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE SHALL NOT EXCEED:\$9,000,000.00

This Mortgage, dated 12/10/07 is by **Gordon Paving Co., Inc., an Idaho corporation**, after this called "Mortgagor" whether one or more) whose mailing address is 837 Madrona Street South, Twin Falls, Idaho 83301 to **Agri-Access®,*** (after this called "Mortgagee"), a federally chartered corporation with principal offices at PO Box 7438, 3555 9th Street, Ste 400, Rochester MN, 55901.

For valuable consideration, Mortgagor grants, sells, mortgages and warrants to Mortgagee, its successors and assigns, forever, the real estate in **Cassia County**, Idaho, described in Exhibit A to this Mortgage, which is by this reference made a part of this Mortgage, together with all the tenements, hereditaments and appurtenances belonging or in any way appertaining to this real estate. All of the preceding property and property rights, including the real estate described in Exhibit A, are after this collectively called "the Mortgaged Property".

THIS MORTGAGE SECURES: (a) the repayment of indebtedness in the principal sum of \$9,000,000.00, which Mortgagee has previously or along with this Mortgage advanced or is obligated to advance, evidenced by the Bond(s) as described in a Bond Purchase Agreement dated 12/10/07, (after this called "Bond(s)"), as follows:

Date of Bond(s)	Face Amount (\$)	Maturity Date
December 10, 2007	9,000,000.00	December 10, 2034

and any other indebtedness payable to Mortgagee evidenced by Bond(s) secured by prior liens on the real estate described in Exhibit A, together with interest as provided in the Bond(s), and all extensions, renewals, and modifications thereof; (b) the repayment fo all additional advances which Mortgagee may make from time to time to the Mortgagor or to the issure of the Bond(s) pursuant to the terms of the Bond Purchase Agreement prior to the release of this Mortgage, whether made before or after the maturity of the Bond(s) and whether evidenced by the same or other Bond(s) given after this Mortgage, with interest as provided in the Bond(s), and all extensions, renewals and modifications thereof. However, the maximum principal amount secured by this Mortgage at any one time, exclusive of interest, shall not exceed **\$9,000,000.00** in the aggregate. If the unpaid principal amount at any one time exceeds this sum, this Mortgage shall secure that portion of the unpaid principal amount that does nto exceed this sum, and interest thereon;

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(c) notwithstanding the above limitation, the repayment of all other amounts with interest to which Mortgagee may become entitled under this Mortgage; and (d) the performance and observance by Mortgagor of all the warranties, agreements and terms contained in this Mortgage and the Bond Purchase Agreement.

By execution of this Mortgage, Mortgagor hereby acknowledges receipt of all of the proceeds evidenced by the above Bond(s).

All principal, interest and other sums or charges payable to Mortgagee and secured by this Mortgage are after this called the "Indebtedness."

If the Indebtedness is paid to Mortgagee when due and Mortgagor keeps and performs all the warranties, agreements and terms contained in this Mortgage, then this Mortgage shall be void.

MORTGAGOR WARRANTS THAT: (a) Mortgagor has fee simple title to the Mortgaged Property and good right to convey it, (b) Mortgagee shall quietly enjoy and possess the Mortgaged Property, and (c) except as expressly set forth in this Mortgage, the Mortgaged Property is free from all encumbrances and Mortgagor will warrant and defend title to the Mortgaged Property against all lawful claims.

MORTGAGOR AGREES AS FOLLOWS:

1. **Discharge Liens.** To pay and discharge when due all present and future taxes, assessments, judgments, mortgages and liens on the Mortgaged Property and to perform every obligation imposed upon Mortgagor by the instruments creating these liens.

2. **Insurance.** (a) Risks to be Insured. The Mortgagor will at its expense maintain with insurers satisfactory to the Mortgagee such insurance as may be required by the Bond Purchase Agreement. (b) Damage or Destruction of the Mortgaged Property. Mortgagor shall give the Mortgagee prompt notice of any damage to or destruction of the Mortgaged Property and in case of loss covered by policies of insurance, the Mortgagee (whether before or after foreclosure sale) is hereby authorized at its option to settle and adjust any claim arising out of such policies and collect and receive the proceeds payable therefrom, provided, that the Mortgagor may itself adjust and collect for any losses arising out of a single occurrence aggregating not in excess of \$25,000.00. Any expense incurred by the Mortgagee in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Mortgagee) shall be reimbursed to the Mortgagee first out of any proceeds. The proceeds or any part thereof shall be applied to reduction of the Indebtedness then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee. (c) Delivery of Insurance Certificates. The Mortgagor will deliver to the Mortgagee certificates evidencing the existence of all insurance policies with respect to the Mortgaged Property which the Mortgagor is required to maintain or cause to be maintained pursuant to this paragraph together with evidence as to the payment of all premiums then due thereon.

3. **Condemnation.** Mortgagor shall give the Mortgagee prompt notice of any actual or threatened condemnation or eminent domain proceedings affecting the Mortgaged Property and hereby assigns, transfers, and sets over to the Mortgagee the entire proceeds of any award or claim for damages or settlement in lieu thereof for all or any part of the Mortgaged Property taken or damaged under such eminent domain or condemnation proceedings, the Mortgagee being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Mortgagor will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Mortgaged Property or agreeing to a settlement unless prior written consent of Mortgagee is obtained. Any expenses incurred by the Mortgagee in intervening in such action or collecting such proceeds, including reasonable attorney's fees, shall be reimbursed to the Mortgagee first out of the proceeds. The proceeds or any part thereof shall be applied upon or in reduction of the Indebtedness secured hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee.

4. **Disbursement of Insurance and Condemnation Proceeds.** (a) Restoration of Mortgaged Property. Any restoration or repair of the Mortgaged Property shall be done under the supervision of an architect or general contractor acceptable to Mortgagee and pursuant to plans and specifications approved by the Mortgagee. In such case where Mortgagee may elect to apply the proceeds to repair or restoration or permit the Mortgagor to so apply the proceeds, then the proceeds shall be held by Mortgagee for such purposes and will from time to time be disbursed by Mortgagee to defray the costs of such restoration or

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repair under such safeguards and controls as Mortgagee may establish to assure completion in accordance with the approved plans and specifications and free of liens or claims. Mortgagor shall on demand deposit with Mortgagee any sums necessary to make up any deficits between the actual cost of the work and the proceeds and provide such lien waivers and completion bonds as Mortgagee may reasonably require. Any surplus which may remain after payment of all costs of restoration or repair may at the option of the Mortgagee be applied on account of the Indebtedness secured hereby then most remotely to be paid, whether due or not, without application of any prepayment premium or shall be returned to Mortgagor as Mortgagor's interest may appear, the choice of application to be solely at the discretion of Mortgagee. (b) Disbursement of Proceeds. Notwithstanding the foregoing provisions regarding the disposition of insurance and condemnation proceeds, but only if Mortgagor meets the following conditions, Mortgagee will not elect to apply all of such proceeds to the Indebtedness, but shall hold such proceeds in an escrow account, from which account the proceeds may be withdrawn only by Mortgagee and shall be readvanced to Mortgagor for the purpose of reconstructing or restoring the Mortgaged Property under the following terms and conditions. Mortgagee shall make insurance proceeds available to Mortgagor **ONLY IF**: (i) at the time of the occurrence of the event for which proceeds are being received and at the time of the receipt of such proceeds, there is no existing uncured Event of Default hereunder; and (ii) the total proceeds to be received, together with such other sums as Mortgagor may deposit with Mortgagee, shall be sufficient, in Mortgagee's opinion, to restore the Mortgaged Property to its original condition. All such proceeds and sums shall be held by Mortgagee in an interest-bearing deposit account under the sole and exclusive control and dominion of Mortgagee, and Mortgagor shall have no right to withdraw or otherwise direct the payment of any funds from such account. If Mortgagor qualifies for the right to use such proceeds for the reconstruction and restoration of the Mortgaged Property, then Mortgagee shall advance such proceeds and sums to Mortgagor in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, without limitation, Mortgagee's right to require such items as a sworn construction statement, recordable lien waivers and appropriate title insurance endorsements. Any excess proceeds and sums and interest thereon not required to complete such restoration shall, at Mortgagee's option, be applied first to payment of the Indebtedness secured hereby in such manner as Mortgagee shall determine with any excess to be paid to Mortgagor.

5. Protective Advances. If Mortgagor fails to pay taxes, assessments, judgments, mortgages or other liens on the Mortgaged Property or to maintain insurance as required by this Mortgage, Mortgagee may do so.

6. Pro Rata Payments. Mortgagee may, at its option, require Mortgagor to pay to Mortgagee, at the same time as each regular installment of principal and interest, an amount equal to a pro rata portion of the taxes, assessments and insurance premiums next to become due, as estimated by Mortgagee.

7. Protective Actions. In any collection or foreclosure activities or proceedings, or if Mortgagor fails to perform any agreement or term contained in this Mortgage, or if any proceeding is commenced which affects Mortgagee's interest in the Mortgaged Property (including but not limited to eminent domain, insolvency, bankruptcy code enforcement or probate), Mortgagee may (but is not obligated to) make such appearances, disburse such sums and take such actions as Mortgagee believes are necessary to protect its interest or preserve the value of the Mortgaged Property. This includes, but is not limited to, disbursement of reasonable attorneys' fees, court costs, costs of environmental audits and compliance, costs of appraisals and title evidence, and making repairs and maintenance. Mortgagee may inspect the Mortgaged Property at reasonable times including investigating the environmental condition of the Mortgaged Property and taking soil and water samples.

8. Additions to Indebtedness. All amounts incurred or advanced by Mortgagee under paragraph 4 or 5 of this Mortgage shall be due immediately, shall bear interest as provided in the Bond described in this Mortgage or the Bond with the latest maturity date if more than one is described, and shall be secured by this Mortgage.

9. Maintain Mortgaged Property. (a) To not remove or permit to be removed any buildings, improvements or fixtures from the Mortgaged Property, (b) to maintain the Mortgaged Property in good repair and condition, (c) to cultivate the Mortgaged Property in a good, husbandlike manner, (d) to use the Mortgaged Property for farm purposes (if used for farm purposes on the date of this Mortgage), (e) to not cut or remove wood or timber from the Mortgaged Property except for domestic use, and (f) to neither commit nor permit waste of the Mortgaged Property. If the Mortgaged Property is abandoned or left

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unoccupied Mortgagee may (but is not obligated to) go upon the Mortgaged Property to protect it against waste, vandalism or other damage without liability for trespass.

10. Complete Improvements. To complete in a reasonable time any improvements now or later under construction on the Mortgaged Property.

11. Use of Bond Proceeds. The proceeds of the Indebtedness shall be used solely for (a) the purposes specified in the Bond application, Bond, Bond Purchase Agreement or, (b) other purposes Mortgagee may require or agree to in writing.

12. Assignment of Rents. To further secure the payment of the Indebtedness, Mortgagor by this Mortgage assigns to Mortgagee the rents and profits of the Mortgaged Property now due or which may later become due. Upon Default under this Mortgage by Mortgagor, Mortgagee shall immediately and without any further action to enforce its interest have an enforceable and perfected right to receive such rents and profits continuing through the entire redemption period from any foreclosure sale. Rents and profits so received shall be applied to the Indebtedness. This assignment shall be enforceable with or without appointment of a receiver.

13. Minerals and Eminent Domain. In this paragraph 13, "minerals" includes but is not limited to oil, gas, coal, lignite, rock, stone, gravel, sand, clay, peat and earth. Mortgagee shall, at its option, receive all sums which may accrue to Mortgagor from eminent domain proceedings or from the sale, lease, development or removal of minerals in and under the Mortgaged Property. These sums shall be applied to the Indebtedness as Mortgagee elects. Nothing in this Mortgage, however, obligates Mortgagee to accept these sums or constitutes consent to the sale, lease, development or removal of minerals, or obligates Mortgagee to receive any payment during foreclosure or a redemption period. If a lawful claimant enters or asserts a right of entry on the Mortgaged Property for the purpose of exploration, development or removal of minerals under reservation or conveyance paramount to this Mortgage, to the exclusion of and without compensation to Mortgagor, then, at the option of Mortgagee, the entire Indebtedness shall become due and payable.

14. Actions Not Affecting Lien or Liability. Without affecting the priority of the lien of this Mortgage or the liability of Mortgagor or of any other party for the payment of the Indebtedness, Mortgagee may from time to time without notice to Mortgagor: (a) release all or a part of the Mortgaged Property from the lien of this Mortgage, (b) extend and defer the maturity of and renew and reamortize all or any part of the Indebtedness, (c) adjust interest rates as provided in the Bond(s) and (d) release from liability for payment of the Indebtedness one or more parties who are or become liable for its payment.

15. Hazardous Substances. To comply with all federal, state and local laws and the recommendations of all courts and government agencies concerning the generation, use, discharge, release, storage and disposal of hazardous substances, petroleum products and general waste on the Mortgaged Property. Mortgagor warrants that no hazardous substances have previously been discharged, released, stored or disposed of on the Mortgaged Property and will take all remedial action necessary to remove any hazardous substance found on the Mortgaged Property during the term of this Mortgage or after default by Mortgagor. Mortgagor will indemnify Mortgagee, its directors, officers, employees and agents against all claims and losses, including court costs and attorneys' fees, arising directly or indirectly out of Mortgagor's failure to comply with this paragraph. This warranty and indemnity shall survive termination of this Mortgage.

16. Events of Default. Each of the following constitutes a default of this Mortgage by Mortgagor (Default): (a) failure to pay when due any part of the Indebtedness; (b) failure to perform or observe any warranty, agreement or term contained in this Mortgage or in any Bond(s) evidencing the Indebtedness or in any related Bond purchase agreement(s); (c) the appointment of a receiver, receiver pendente lite or liquidator, whether voluntary or involuntary, for the Mortgagor or for any of the property of the Mortgagor; (d) the filing of a petition by or against the Mortgagor under the provisions of any state insolvency law or the Bankruptcy Reform Act of 1978, as amended; (e) the making by the Mortgagor of an assignment for the benefit of creditors; (f) the sale or transfer without Mortgagee's prior written consent of all, any part of, or any interest in, the Mortgaged Property or any beneficial interest in a land trust holding title to the Mortgaged Property by Mortgagor or any party having a beneficial interest in the land trust; (g) the transfer without Mortgagee's prior written consent of stock in a corporation holding title to all or any part of the Mortgaged Property by any stockholder of such corporation, if the result is that a majority of shares of the stock is owned by any parties who are not stockholders at the date of this Mortgage.

17. Remedies on Default. Mortgagee may do any one or more of the following if a Default occurs under

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paragraph 16: (a) The entire Indebtedness may become immediately due without notice and bear interest as provided in the Bond(s) evidencing the Indebtedness and Mortgagee may collect this amount in a suit at law or by foreclosure of this Mortgage (judicially or by power of sale) or both; (b) Sell and convey the Mortgaged Property at public auction and execute to the purchaser(s), deeds of conveyance in accordance with the statutes; (c) At any sale held pursuant to this power of sale or pursuant to a court decree all of the Mortgaged Property may be sold as one parcel and any law to the contrary is waived by Mortgagor; (d) Mortgagee may retain out of the sale proceeds amounts due Mortgagee under this Mortgage, the costs of the sale, and attorneys' fees as provided by statute or in a reasonable amount; (e) In any foreclosure action or other proceeding the court may appoint a receiver and receiver pendente lite for the Mortgaged Property with the usual powers provided by statute, and Mortgagor hereby consents to the appointment; (f) If there is any security other than this Mortgage for the Indebtedness, then Mortgagee may proceed upon this and the other security either concurrently or separately in any order it chooses; (g) If this Mortgage secures multiple Bonds, Mortgagee may apply foreclosure sale proceeds to the Bonds in the order and amounts it elects.

18. Cumulative Rights. All rights and remedies of Mortgagee in this Mortgage are cumulative and are in addition to other rights and remedies given in this Mortgage or provided by law.

19. Waiver. The failure or delay of Mortgagee to exercise any right is not a waiver of that right.


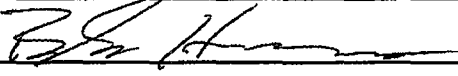
20. Successors. This Mortgage shall bind and benefit the parties to this Mortgage and their respective heirs, executors, administrators, successors and assigns.

21. Conformed Copy and Default Notice. If required by Idaho law, Mortgagee will: (a) provide Mortgagor with a conformed copy of this Mortgage and the Bond(s) it secures at the time they are executed or within a reasonable time after the recording of the Mortgage, and (b) if Mortgagee intends to foreclose this Mortgage, give Mortgagor written notice of any default under the terms or conditions of this Mortgage or the Bond(s) secured hereby. The notice will be sent by certified mail to the address of the Mortgaged Property, or such other address as Mortgagor designates in writing to Mortgagee. The notice will contain the following provisions: (a) the nature of the default; (b) the action required to cure the default; (c) a date not less than 30 days from the date the notice is mailed by which the default must be cured; (d) that failure to cure the default by the specified date will result in acceleration of the sums secured by the Mortgage and sale of the Mortgaged Property; (e) that Mortgagor has the right to reinstate the Mortgage after acceleration; and (f) that Mortgagor has the right to bring a court action to assert the nonexistence of a default or any other defense of Mortgagor to acceleration and sale.

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BLANK*****

ISSUER:

Gordon Paving Co., Inc., an Idaho Corporation

By 	By 
Name: Brian Hansen, in his capacity as Secretary of Gordon Paving Company, Inc.,	Name: Brandon Hansen, in his capacity as Vice President of Gordon Paving Company, Inc.,

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ACKNOWLEDGMENTS

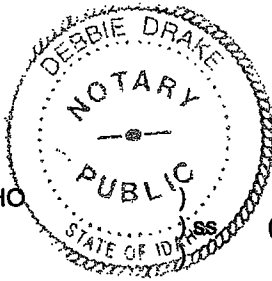
STATE OF IDAHO)
) ss. (Individual)
 COUNTY OF)

On _____ before me personally appeared _____ to
 me known to be the person(s) described in and who executed the foregoing instrument, and
 acknowledged that _____ executed the same as _____ free
 act and deed.

Name: _____
 Notary Public, State of _____
 Commissioned in _____ County
 My commission expires: _____

STATE OF IDAHO)
) ss. (Corporation)
 COUNTY OF Twin Falls)

Vice The foregoing instrument was acknowledged before me this 12/10/07, by Brandon Hansen
 President and Brian Hansen Secretary of Gordon Paving Co Inc a/an
 _____ corporation, on behalf of the corporation.



Name: Debbie Drake
 Notary Public, State of IDAHO
 Commissioned in _____ County
 My commission expires: _____

STATE OF IDAHO)
) ss. (Partnership)
 COUNTY OF)

Residing at: Twin Falls, Idaho
 Commission Expires: 04-13-2012

The foregoing instrument was acknowledged before me this _____ By _____
 Partners, on behalf of the _____ a/an _____ partnership.

Name: _____
 Notary Public, State of _____
 Commissioned in _____ County
 My commission expires: _____

This instrument was prepared under the supervision of Legal Counsel for the Mortgagee herein by:

 (Name) (Address)

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The land referred to is described as follows:

TOWNSHIP 12 SOUTH, RANGE 22 EAST, BOISE MERIDIAN, CASSIA COUNTY, IDAHO

Section 21: Part of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and all of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and part of the NE $\frac{1}{4}$ SW $\frac{1}{4}$, more particularly described as follows:

Beginning at the East 1/4 Section corner of said Section 21, said corner marked by a 5/8" rebar with a 3" cap on top of a US GLO iron pipe with brass cap which shall be the Point of Beginning:

Thence South 00°26'08" East along the East line of Section 21 for a distance of 30.00 feet;

Thence North 88°36'53" West (N 88°31'13" W, rec.) for a distance of 27.59 feet to a 1/2" rebar;

Thence North 88°36'53" West (N 88°31'13" W, rec.) for a distance of 173.81 feet to a 1/2" rebar;

Thence South 01°58'20" West (S 2°04'00" W, rec.) for a distance of 223.05 feet to a 1/2" rebar;

Thence South 31°11'36" West (S 31°25'17" W, rec.) for a distance of 151.12 feet (150.58', rec.) to a 1/2" rebar;

Thence South 40°09'49" East (S 40°03'36" E, rec.) for a distance of 186.16 feet to a 1/2" rebar on the West Right-of-Way of State Highway 27;

Thence South 33°39'41" West along said highway Right-of-Way for a distance of 957.75 feet to a concrete Right-of-Way marker on the South line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Thence North 89°25'23" West along the South line of the N $\frac{1}{4}$ SE $\frac{1}{4}$ for a distance of 1946.35 feet to a 5/8" rebar at the SW corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Thence North 89°25'23" West for a distance of 25.36 feet to a 1/2" rebar;

Thence North 00°20'27" West for a distance of 1323.00 feet to a 1/2" rebar on the North line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$;

Thence South 89°26'30" East along the North line of the N $\frac{1}{4}$ SW $\frac{1}{4}$ for a distance of 22.58 feet to the Center 1/4 corner of Section 21;

Thence South 89°26'30" East along the N $\frac{1}{4}$ SE $\frac{1}{4}$ for a distance of 2654.88 feet to the Point of Beginning.

ALL IN CASSIA COUNTY, STATE OF IDAHO

TWIN FALLS COUNTY

RECORDED FOR:

TWIN FALLS TITLE

2:18:53 pm 12-26-2007

2007-030884

NO. PAGES: 15

FEE: \$45.00

KRISTINA GLASCOCK
COUNTY CLERK

DEPUTY: BHUNTER

IDAHO OPEN-END MORTGAGE

T071118

No. 7616454400

TOTAL PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE SHALL NOT
EXCEED:\$9,000,000.00

This Mortgage, dated 12/10/07 is by **Blackrock Land Holdings, LLC, an Idaho Limited Liability Company** after this called "Mortgagor" whether one or more) whose mailing address is 837 Madrona Street South, Twin Falls, Idaho 83301 to **Agri-Access®**,* (after this called "Mortgagee"), a federally chartered corporation with principal offices at PO Box 7438, 3555 9th Street, Ste 400, Rochester MN, 55901.

For valuable consideration, Mortgagor grants, sells, mortgages and warrants to Mortgagee, its successors and assigns, forever, the real estate in **Twin Falls County, Idaho**, described in Exhibit A to this Mortgage, which is by this reference made a part of this Mortgage, together with all the tenements, hereditaments and appurtenances belonging or in any way appertaining to this real estate. All of the preceding property and property rights, including the real estate described in Exhibit A, are after this collectively called "the Mortgaged Property".

THIS MORTGAGE SECURES: (a) the repayment of indebtedness in the principal sum of \$9,000,000.00, which Mortgagee has previously or along with this Mortgage advanced or is obligated to advance, evidenced by the Bond(s) as described in a Bond Purchase Agreement dated 12/10/07, (after this called "Bond(s)"), as follows:

Date of Bond(s)
December 10, 2007

Face Amount (\$)
9,000,000.00

Maturity Date
December 10, 2034

and any other indebtedness payable to Mortgagee evidenced by Bond(s) secured by prior liens on the real estate described in Exhibit A, together with interest as provided in the Bond(s), and all extensions, renewals, and modifications thereof; (b) the repayment for all additional advances which Mortgagee may make from time to time to the Mortgagor or to the issuer of the Bond(s) pursuant to the terms of the Bond Purchase Agreement prior to the release of this Mortgage, whether made before or after the maturity of the Bond(s) and whether evidenced by the same or other Bond(s) given after this Mortgage, with interest as provided in the Bond(s), and all extensions, renewals and modifications thereof. However, the maximum principal amount secured by this Mortgage at any one time, exclusive of interest, shall not exceed **\$9,000,000.00** in the aggregate. If the unpaid principal amount at any one time exceeds this sum, this Mortgage shall secure that portion of the unpaid principal amount that does not exceed this sum, and interest thereon;

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(c) notwithstanding the above limitation, the repayment of all other amounts with interest to which Mortgagee may become entitled under this Mortgage; and (d) the performance and observance by Mortgagor of all the warranties, agreements and terms contained in this Mortgage and the Bond Purchase Agreement.

By execution of this Mortgage, Mortgagor hereby acknowledges receipt of all of the proceeds evidenced by the above Bond(s).

All principal, interest and other sums or charges payable to Mortgagee and secured by this Mortgage are after this called the "Indebtedness."

If the Indebtedness is paid to Mortgagee when due and Mortgagor keeps and performs all the warranties, agreements and terms contained in this Mortgage, then this Mortgage shall be void.

MORTGAGOR WARRANTS THAT: (a) Mortgagor has fee simple title to the Mortgaged Property and good right to convey it, (b) Mortgagee shall quietly enjoy and possess the Mortgaged Property, and (c) except as expressly set forth in this Mortgage, the Mortgaged Property is free from all encumbrances and Mortgagor will warrant and defend title to the Mortgaged Property against all lawful claims.

MORTGAGOR AGREES AS FOLLOWS:

1. **Discharge Liens.** To pay and discharge when due all present and future taxes, assessments, judgments, mortgages and liens on the Mortgaged Property and to perform every obligation imposed upon Mortgagor by the instruments creating these liens.

2. **Insurance.** (a) Risks to be Insured. The Mortgagor will at its expense maintain with insurers satisfactory to the Mortgagee such insurance as may be required by the Bond Purchase Agreement. (b) Damage or Destruction of the Mortgaged Property. Mortgagor shall give the Mortgagee prompt notice of any damage to or destruction of the Mortgaged Property and in case of loss covered by policies of insurance, the Mortgagee (whether before or after foreclosure sale) is hereby authorized at its option to settle and adjust any claim arising out of such policies and collect and receive the proceeds payable therefrom, provided, that the Mortgagor may itself adjust and collect for any losses arising out of a single occurrence aggregating not in excess of \$25,000.00. Any expense incurred by the Mortgagee in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Mortgagee) shall be reimbursed to the Mortgagee first out of any proceeds. The proceeds or any part thereof shall be applied to reduction of the Indebtedness then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee. (c) Delivery of Insurance Certificates. The Mortgagor will deliver to the Mortgagee certificates evidencing the existence of all insurance policies with respect to the Mortgaged Property which the Mortgagor is required to maintain or cause to be maintained pursuant to this paragraph together with evidence as to the payment of all premiums then due thereon.

3. **Condemnation.** Mortgagor shall give the Mortgagee prompt notice of any actual or threatened condemnation or eminent domain proceedings affecting the Mortgaged Property and hereby assigns, transfers, and sets over to the Mortgagee the entire proceeds of any award or claim for damages or settlement in lieu thereof for all or any part of the Mortgaged Property taken or damaged under such eminent domain or condemnation proceedings, the Mortgagee being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Mortgagor will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Mortgaged Property or agreeing to a settlement unless prior written consent of Mortgagee is obtained. Any expenses incurred by the Mortgagee in intervening in such action or collecting such proceeds, including reasonable attorney's fees, shall be reimbursed to the Mortgagee first out of the proceeds. The proceeds or any part thereof shall be applied upon or in reduction of the Indebtedness secured hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee.

4. **Disbursement of Insurance and Condemnation Proceeds.** (a) Restoration of Mortgaged Property. Any restoration or repair of the Mortgaged Property shall be done under the supervision of an architect or general contractor acceptable to Mortgagee and pursuant to plans and specifications approved by the Mortgagee. In such case where Mortgagee may elect to apply the proceeds to repair or restoration or permit the Mortgagor to so apply the proceeds, then the proceeds shall be held by Mortgagee for such purposes and will from time to time be disbursed by Mortgagee to defray the costs of such restoration or

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repair under such safeguards and controls as Mortgagee may establish to assure completion in accordance with the approved plans and specifications and free of liens or claims. Mortgagor shall on demand deposit with Mortgagee any sums necessary to make up any deficits between the actual cost of the work and the proceeds and provide such lien waivers and completion bonds as Mortgagee may reasonably require. Any surplus which may remain after payment of all costs of restoration or repair may at the option of the Mortgagee be applied on account of the Indebtedness secured hereby then most remotely to be paid, whether due or not, without application of any prepayment premium or shall be returned to Mortgagor as Mortgagor's interest may appear, the choice of application to be solely at the discretion of Mortgagee. (b) Disbursement of Proceeds. Notwithstanding the foregoing provisions regarding the disposition of insurance and condemnation proceeds, but only if Mortgagor meets the following conditions, Mortgagee will not elect to apply all of such proceeds to the Indebtedness, but shall hold such proceeds in an escrow account, from which account the proceeds may be withdrawn only by Mortgagee and shall be readvanced to Mortgagor for the purpose of reconstructing or restoring the Mortgaged Property under the following terms and conditions. Mortgagee shall make insurance proceeds available to Mortgagor ONLY IF: (i) at the time of the occurrence of the event for which proceeds are being received and at the time of the receipt of such proceeds, there is no existing uncured Event of Default hereunder; and (ii) the total proceeds to be received, together with such other sums as Mortgagor may deposit with Mortgagee, shall be sufficient, in Mortgagee's opinion, to restore the Mortgaged Property to its original condition. All such proceeds and sums shall be held by Mortgagee in an interest-bearing deposit account under the sole and exclusive control and dominion of Mortgagee, and Mortgagor shall have no right to withdraw or otherwise direct the payment of any funds from such account. If Mortgagor qualifies for the right to use such proceeds for the reconstruction and restoration of the Mortgaged Property, then Mortgagee shall advance such proceeds and sums to Mortgagor in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, without limitation, Mortgagee's right to require such items as a sworn construction statement, recordable lien waivers and appropriate title insurance endorsements. Any excess proceeds and sums and interest thereon not required to complete such restoration shall, at Mortgagee's option, be applied first to payment of the Indebtedness secured hereby in such manner as Mortgagee shall determine with any excess to be paid to Mortgagor.

5. Protective Advances. If Mortgagor fails to pay taxes, assessments, judgments, mortgages or other liens on the Mortgaged Property or to maintain insurance as required by this Mortgage, Mortgagee may do so.

6. Pro Rata Payments. Mortgagee may, at its option, require Mortgagor to pay to Mortgagee, at the same time as each regular installment of principal and interest, an amount equal to a pro rata portion of the taxes, assessments and insurance premiums next to become due, as estimated by Mortgagee.

7. Protective Actions. In any collection or foreclosure activities or proceedings, or if Mortgagor fails to perform any agreement or term contained in this Mortgage, or if any proceeding is commenced which affects Mortgagee's interest in the Mortgaged Property (including but not limited to eminent domain, insolvency, bankruptcy code enforcement or probate), Mortgagee may (but is not obligated to) make such appearances, disburse such sums and take such actions as Mortgagee believes are necessary to protect its interest or preserve the value of the Mortgaged Property. This includes, but is not limited to, disbursement of reasonable attorneys' fees, court costs, costs of environmental audits and compliance, costs of appraisals and title evidence, and making repairs and maintenance. Mortgagee may inspect the Mortgaged Property at reasonable times including investigating the environmental condition of the Mortgaged Property and taking soil and water samples.

8. Additions to Indebtedness. All amounts incurred or advanced by Mortgagee under paragraph 4 or 5 of this Mortgage shall be due immediately, shall bear interest as provided in the Bond described in this Mortgage or the Bond with the latest maturity date if more than one is described, and shall be secured by this Mortgage.

9. Maintain Mortgaged Property. (a) To not remove or permit to be removed any buildings, improvements or fixtures from the Mortgaged Property, (b) to maintain the Mortgaged Property in good repair and condition, (c) to cultivate the Mortgaged Property in a good, husbandlike manner, (d) to use the Mortgaged Property for farm purposes (if used for farm purposes on the date of this Mortgage), (e) to not cut or remove wood or timber from the Mortgaged Property except for domestic use, and (f) to neither commit nor permit waste of the Mortgaged Property. If the Mortgaged Property is abandoned or left

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unoccupied Mortgagee may (but is not obligated to) go upon the Mortgaged Property to protect it against waste, vandalism or other damage without liability for trespass.

10. Complete Improvements. To complete in a reasonable time any improvements now or later under construction on the Mortgaged Property.

11. Use of Bond Proceeds. The proceeds of the Indebtedness shall be used solely for (a) the purposes specified in the Bond application, Bond, Bond Purchase Agreement or, (b) other purposes Mortgagee may require or agree to in writing.

12. Assignment of Rents. To further secure the payment of the Indebtedness, Mortgagor by this Mortgage assigns to Mortgagee the rents and profits of the Mortgaged Property now due or which may later become due. Upon Default under this Mortgage by Mortgagor, Mortgagee shall immediately and without any further action to enforce its interest have an enforceable and perfected right to receive such rents and profits continuing through the entire redemption period from any foreclosure sale. Rents and profits so received shall be applied to the Indebtedness. This assignment shall be enforceable with or without appointment of a receiver.

13. Minerals and Eminent Domain. In this paragraph 13, "minerals" includes but is not limited to oil, gas, coal, lignite, rock, stone, gravel, sand, clay, peat and earth. Mortgagee shall, at its option, receive all sums which may accrue to Mortgagor from eminent domain proceedings or from the sale, lease, development or removal of minerals in and under the Mortgaged Property. These sums shall be applied to the Indebtedness as Mortgagee elects. Nothing in this Mortgage, however, obligates Mortgagee to accept these sums or constitutes consent to the sale, lease, development or removal of minerals, or obligates Mortgagee to receive any payment during foreclosure or a redemption period. If a lawful claimant enters or asserts a right of entry on the Mortgaged Property for the purpose of exploration, development or removal of minerals under reservation or conveyance paramount to this Mortgage, to the exclusion of and without compensation to Mortgagor, then, at the option of Mortgagee, the entire Indebtedness shall become due and payable.

14. Actions Not Affecting Lien or Liability. Without affecting the priority of the lien of this Mortgage or the liability of Mortgagor or of any other party for the payment of the Indebtedness, Mortgagee may from time to time without notice to Mortgagor: (a) release all or a part of the Mortgaged Property from the lien of this Mortgage, (b) extend and defer the maturity of and renew and reamortize all or any part of the Indebtedness, (c) adjust interest rates as provided in the Bond(s) and (d) release from liability for payment of the Indebtedness one or more parties who are or become liable for its payment.

15. Hazardous Substances. To comply with all federal, state and local laws and the recommendations of all courts and government agencies concerning the generation, use, discharge, release, storage and disposal of hazardous substances, petroleum products and general waste on the Mortgaged Property. Mortgagor warrants that no hazardous substances have previously been discharged, released, stored or disposed of on the Mortgaged Property and will take all remedial action necessary to remove any hazardous substance found on the Mortgaged Property during the term of this Mortgage or after default by Mortgagor. Mortgagor will indemnify Mortgagee, its directors, officers, employees and agents against all claims and losses, including court costs and attorneys' fees, arising directly or indirectly out of Mortgagor's failure to comply with this paragraph. This warranty and indemnity shall survive termination of this Mortgage.

16. Events of Default. Each of the following constitutes a default of this Mortgage by Mortgagor (Default): (a) failure to pay when due any part of the Indebtedness; (b) failure to perform or observe any warranty, agreement or term contained in this Mortgage or in any Bond(s) evidencing the Indebtedness or in any related Bond purchase agreement(s); (c) the appointment of a receiver, receiver pendente lite or liquidator, whether voluntary or involuntary, for the Mortgagor or for any of the property of the Mortgagor; (d) the filing of a petition by or against the Mortgagor under the provisions of any state insolvency law or the Bankruptcy Reform Act of 1978, as amended; (e) the making by the Mortgagor of an assignment for the benefit of creditors; (f) the sale or transfer without Mortgagee's prior written consent of all, any part of, or any interest in, the Mortgaged Property or any beneficial interest in a land trust holding title to the Mortgaged Property by Mortgagor or any party having a beneficial interest in the land trust; (g) the transfer without Mortgagee's prior written consent of stock in a corporation holding title to all or any part of the Mortgaged Property by any stockholder of such corporation, if the result is that a majority of shares of the stock is owned by any parties who are not stockholders at the date of this Mortgage.

17. Remedies on Default. Mortgagee may do any one or more of the following if a Default occurs under

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paragraph 16: (a) The entire Indebtedness may become immediately due without notice and bear interest as provided in the Bond(s) evidencing the Indebtedness and Mortgagee may collect this amount in a suit at law or by foreclosure of this Mortgage (judicially or by power of sale) or both; (b) Sell and convey the Mortgaged Property at public auction and execute to the purchaser(s), deeds of conveyance in accordance with the statutes; (c) At any sale held pursuant to this power of sale or pursuant to a court decree all of the Mortgaged Property may be sold as one parcel and any law to the contrary is waived by Mortgagor; (d) Mortgagee may retain out of the sale proceeds amounts due Mortgagee under this Mortgage, the costs of the sale, and attorneys' fees as provided by statute or in a reasonable amount; (e) In any foreclosure action or other proceeding the court may appoint a receiver and receiver pendente lite for the Mortgaged Property with the usual powers provided by statute, and Mortgagor hereby consents to the appointment; (f) If there is any security other than this Mortgage for the Indebtedness, then Mortgagee may proceed upon this and the other security either concurrently or separately in any order it chooses; (g) If this Mortgage secures multiple Bonds, Mortgagee may apply foreclosure sale proceeds to the Bonds in the order and amounts it elects.

18. Cumulative Rights. All rights and remedies of Mortgagee in this Mortgage are cumulative and are in addition to other rights and remedies given in this Mortgage or provided by law.

19. Waiver. The failure or delay of Mortgagee to exercise any right is not a waiver of that right.

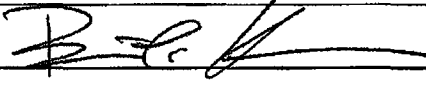
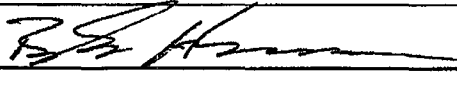
20. Successors. This Mortgage shall bind and benefit the parties to this Mortgage and their respective heirs, executors, administrators, successors and assigns.

21. Conformed Copy and Default Notice. If required by Idaho law, Mortgagee will: (a) provide Mortgagor with a conformed copy of this Mortgage and the Bond(s) it secures at the time they are executed or within a reasonable time after the recording of the Mortgage, and (b) if Mortgagee intends to foreclose this Mortgage, give Mortgagor written notice of any default under the terms or conditions of this Mortgage or the Bond(s) secured hereby. The notice will be sent by certified mail to the address of the Mortgaged Property, or such other address as Mortgagor designates in writing to Mortgagee. The notice will contain the following provisions: (a) the nature of the default; (b) the action required to cure the default; (c) a date not less than 30 days from the date the notice is mailed by which the default must be cured; (d) that failure to cure the default by the specified date will result in acceleration of the sums secured by the Mortgage and sale of the Mortgaged Property; (e) that Mortgagor has the right to reinstate the Mortgage after acceleration; and (f) that Mortgagor has the right to bring a court action to assert the nonexistence of a default or any other defense of Mortgagor to acceleration and sale.

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ISSUER:

Blackrock Land Holdings.LLC, an Idaho Limited Liability Company

By 	By 
Name: Brian Hansen, in his capacity as Member of Blackrock Land Holdings, LLC	Name: Brandon Hansen, in his capacity as Member of Blackrock Land Holdings, LLC

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ACKNOWLEDGMENTS

STATE OF IDAHO)
) ss. (Individual)
COUNTY OF)

On _____ before me personally appeared _____ to
me known to be the person(s) described in and who executed the foregoing instrument, and
acknowledged that _____ executed the same as _____ free
act and deed.

Name: _____
Notary Public, State of _____
Commissioned in _____ County
My commission expires: _____

STATE OF IDAHO)
) ss. (Corporation) *See attached*
COUNTY OF)

The foregoing instrument was acknowledged before me this _____, by _____,
President and _____ Secretary of _____ a/an
_____ corporation, on behalf of the corporation.

Name: _____
Notary Public, State of _____
Commissioned in _____ County
My commission expires: _____

STATE OF IDAHO)
) ss. (Partnership)
COUNTY OF)

The foregoing instrument was acknowledged before me this _____. By _____
Partners, on behalf of the _____ a/an _____ partnership.

Name: _____
Notary Public, State of _____
Commissioned in _____ County
My commission expires: _____

This instrument was prepared under the supervision of Legal Counsel for the Mortgagee herein by:

(Name)

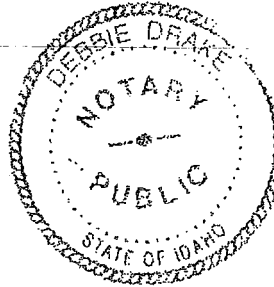
(Address)

State of IDAHO }
County of Twin Falls } ss.

On this 10th day of Dec., in the year 2007, before
me, the undersigned, personally appeared Brian Hansen & Brandon Hansen
known or identified to me to be (the manager, the
managers, a member, the members) of the limited liability company that executed the foregoing
instrument, and acknowledged to me that such limited liability company executed the same.

WITNESS my hand and official seal.

Debbie Drake
Notary Public
Residing At: Residing at: Twin Falls, Idaho
Commission Expires: Commission Expires: 04-13-2012



PARCEL 1

Township 11 South, Range 18 East Boise Meridian, Twin Falls County, Idaho

Section 25: That part of the SW $\frac{1}{4}$ situated South of the Twin Falls Canal Co. Ltd., "High Line Canal" and West of Rock Creek;

EXCEPTING the following described parcel:

BEGINNING at the Southwest corner of Section 25, the TRUE POINT OF BEGINNING;

Thence North 424.12 feet along the Westerly boundary of said SW $\frac{1}{4}$;

Thence East 200.00 feet;

Thence South 3°20'19" East 428.71 feet to the Southerly boundary of said SW $\frac{1}{4}$;

Thence North 89°01'01" West 225.00 feet along the Southerly boundary of the SW $\frac{1}{4}$ to the True Point of Beginning.

AND EXCEPT that portion thereof more particularly described as follows:

Beginning at intersection of centerline of the High Line Canal and East right-of-way line of the present road, which point is approximately 668 feet North and 25 feet East from the Southwest corner of said Section;

Thence Northeasterly along the center line of said High Line Canal 14 feet, more or less, to a point which point bears South 89°17' East 35 feet from Road Station 363+47;

Thence South 0°43' West along a line parallel to and 35 feet Easterly from the centerline of said road 153 feet, more or less, to a point;

Thence South 5°59' West 100.5 feet more or less, to a point on the East right-of-way line of the present road;

THENCE North along said East right of way line 243 feet, more or less, to the Point of Beginning.

AND ALSO EXCEPT;

An irregular parcel of land on the Easterly side of the centerline of road as surveyed and shown on the official plat of Hansen-Rock Creek S-220(4) road survey on file in the office of Department of Public Works of the State of Idaho, and lying in a portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section, described as follows;

Beginning at a point on the Easterly right of way line of the present road, which point is approximately 925 feet North and 25 feet East from the Southwest corner of said Section, which point of beginning bears South 89°17' East 25 feet from road Station 361+00;

Thence South 5°00' East 100.5 feet, more or less, to a point;

Thence South 0°43' West along a line parallel to and 35 feet East from the centerline of road, 147 feet more or less to a point on the centerline of the High Line Canal;

Thence Southwesterly along the centerline of said canal 14 feet, more or less, to a point on the Easterly right-of-way line of the present road;

Thence North along the right-of-way line of the present road 257 feet, more or less, to the Point of Beginning.

SUBJECT TO: Twin Falls County Highway Right of Way

PARCELS 2, 3 & 4

A tract of land located in the Southwest Quarter and the Northwest Quarter of the Southeast Quarter of Section 7 and the Northwest Quarter of Section 18, Township 10 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho, more particularly described as follows;

Beginning at the Northwest corner of said SW1/4 Section 7;

Thence South 87°54'52" East a distance of 543.40 feet along the Northerly boundary of said SW1/4 to the True Point of Beginning;

Thence South 87°54'52" East along said Northerly boundary a distance of 849.17 feet to the Westerly edge of the rimrock of Rock Creek Canyon;

Thence Southerly along said Westerly rimrock the following courses and distances South 09°45'41" West a distance of 86.52 feet;

Thence South 14°23'00" West a distance of 97.35 feet;

Thence South 01°48'50" West a distance of 13.00 feet;

Thence South 61°59'10" West a distance of 25.00 feet;

Thence South 15°21'24" West a distance of 60.77 feet;

Thence South 25°12'16" East a distance of 45.00 feet;

Thence South 46°29'17" East a distance of 27.92 feet;

Thence South 16°28'44" West a distance of 64.42 feet

Thence South 27°24'30" East a distance of 29.53 feet

Thence South 29°33'58" East a distance of 38.62 feet;

Thence South 32°17'58" East a distance of 62.27 feet;

Thence South 16°50'57" East a distance of 67.45 feet;

Thence South 01°32'15" West a distance of 31.43 feet;

Thence South 22°23'46" East a distance of 33.20 feet;

Thence South 08°33'39" West a distance of 54.74 feet;

Thence South 04°45'32" East a distance of 86.83 feet;

Thence South 14°19'18" West a distance of 59.67 feet;

Thence South 87°24'41" East a distance of 16.37 feet;

Thence North 29°30'04" East a distance of 142.02 feet;

Thence South 47°03'18" East a distance of 97.64 feet;

Thence South 75°38'49" East a distance of 35.04 feet;

Thence South 54°50'04" East a distance of 66.71 feet;

Thence South 84°33'14" East a distance of 128.06 feet;

Thence South 81°52'10" East a distance of 152.91 feet;

Thence North 54°08'32" East a distance of 238.17 feet;

Thence South 45°21'15" East a distance of 26.36 feet;

Thence South 32°50'59" West a distance of 115.20 feet;

Thence South 20°57'01" West a distance of 112.56 feet;

Thence South 09°25'30" West a distance of 192.24 feet;

Thence South 01°36'52" West a distance of 71.91 feet;

Thence South 04°55'04" West a distance of 128.65 feet to the Southerly boundary of said NW1/4 SE1/4 Section 7;

Thence North 88°55'25" West a distance of 168.46 feet along said Southerly boundary to the Northeast corner of the SE1/4 SW1/4 of said Section 7;

Thence South 00°29'21" West a distance of 1,042.17 feet along the Easterly boundary of said SE1/4

SW1/4;

Thence North 89° 59'06" West a distance of 323.65 feet;

Thence South 00°28'04" West a distance of 403.73 feet to the Northerly right of way boundary of U.S. Highway 93 /30;

Thence North 89°41'24" West a distance of 1,515.78 feet along said Northerly right of way boundary to the Westerly boundary of said Section 18;

Thence North 00°17'19" East a distance of 140.75 feet along the Westerly boundary of said Section 18 to the corner common to Sections 7, 18 and 12;

Thence North 00°16'30" East a distance of 1,094.85 feet;

Thence South 87°59'34" East a distance of 542.63 feet;

Thence North 00°18'08" East a distance of 1,566.09 feet to the True Point of Beginning.

EXCEPTING THEREFROM; Section 18, Township 10 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho, more particularly described as follows; a parcel of land located in the NW1/4 SE1/4

PARCEL 5

Township 9 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho

Section 13: A parcel of land located in the the NW¼ of said Section 13, more particularly described as follows:

Commencing at the Northwest corner of Section 13, said point lies North 89°50'00" West 2604.03 feet from the North quarter corner of Section 13;

Thence South 89°50'00" East, 438.56 feet to the Real Point of Beginning;

Thence South 89°50'00" East, 1993.12 feet;

Thence South 14°34'53" West, 221.74 feet;

Thence North 88°18'33" West, 133.01 feet;

Thence South 79°20'17" West, 260.92 feet;

Thence South 83°34'47" West, 105.91 feet;

Thence South 78°42'40" West, 165.35 feet;

Thence south 83°14'49" West, 193.47 feet;

Thence North 75°35'08" West, 650.46 feet;

Thence North 72°44'20" West, 257.23 feet;

Thence North 66°17'17" West, 232.39 feet to the Real Point of Beginning.

SUBJECT TO: Highway Right of Way

PARCEL 6A

Township 9 South, Range 15 East Boise Meridian, Twin Falls County, Idaho

Section 12: a tract of land located in the S½ more particularly described as follows;

Beginning at the South quarter corner of said Section 12;

Thence North 89°26'30" West a distance of 2172.02 feet along the Southerly boundary of the SW¼ of said Section 12 to the Easterly boundary of the County Road;

Thence North 62°38'53" West a distance of 118.81 feet along the Easterly boundary of said County Road;

Thence Northwesterly 391.42 feet on the arc of a curve to the right with a radius of 256.43 feet, a central angle of 87°27'27"

and a chord which bears North 18°55'09" West a distance of 354.51 feet to a point of curvature on said East right-of-way line;

Thence North 24°48'34" East a distance of 59.62 feet along said Easterly right-of-way boundary;
Thence North 65°11'26" West a distance of 5.00 feet along said Easterly right-of-way boundary;
Thence North 24°48'34" East a distance of 33.05 feet along said Easterly right-of-way boundary;

Thence South 64°36'45" East a distance of 32.33 feet;
Thence North 52°40'52" East a distance of 58.39 feet;
Thence North 40°31'43" East a distance of 83.27 feet;
Thence North 50°26'48" East a distance of 30.00 feet;
Thence North 83°19'26" East a distance of 81.70 feet;
Thence South 88°26'48" East a distance of 135.39 feet;

Thence South 85°35'28" East a distance of 122.43 feet;
Thence South 83°52'11" East a distance of 118.90 feet;
Thence South 81°48'43" East a distance of 428.32 feet;
Thence South 80°11'24" East a distance of 1351.11;
Thence North 86°27'27" East a distance of 461.25 feet;
Thence South 15°01'25" West a distance of 337.72 feet to a point on the Southerly boundary of said Section 12;

Thence North 89°24'28" West a distance 379.76 feet along the Southerly boundary of said Section to the True Point of Beginning.

PARCEL 6B

AND ALSO INCLUDING an easement for the purpose of ingress, egress and utilities over a strip of ground 60 feet in width located in the S½ of Section 12, Township 9 South, Range 15 East Boise Meridian, Twin Falls county Idaho, more particularly described as follows:

Beginning at the South quarter corner of said Section 12;

Thence South 89°24'28" East a distance of 379.76 feet along the Southerly boundary of the SE¼ of said Section 12;
Thence North 15°01'25" East a distance of 274.43 feet to the True Point of Beginning;
Thence South 86°27'27" West a distance of 448.12 feet;
Thence North 80°11'24" West a distance of 1357.28 feet;
Thence North 81°48'43" West a distance of 426.39 feet;
Thence North 83°52'11" West a distance of 116.93 feet;
Thence North 85°35'28" West a distance of 120.03 feet;
Thence North 88°26'48" West a distance of 129.58;
Thence South 83°19'26" West a distance of 59.68 feet;
Thence South 50°26'48" West a distance of 7.09 feet;
Thence South 40°31'43" West a distance of 84.45 feet;
Thence South 52°40'52" West a distance of 101.33 feet;
Thence South 88°00'08" West a distance of 70.90 feet;

Thence North 24°48'34" East a distance of 59.62 feet;
Thence North 65°11'26" West a distance of 5.00 feet;
Thence North 24°48'34" East a distance of 33.05 feet;
Thence South 64°36'45" East a distance of 32.33 feet;
Thence North 52°40'52" East a distance of 58.39 feet;
Thence North 40°31'43" East a distance of 83.27 feet;
Thence North 50°26'48" East a distance of 30.00 feet;
Thence North 83°19'26" East a distance of 81.70 feet;

Thence south 88°26'48" East a distance of 135.39 feet;
Thence South 85°35'28" East a distance of 122.43 feet;
Thence South 83°52'11" East a distance of 118.90 feet;

Thence South $81^{\circ}48'43''$ East a distance of 428.32 feet;
Thence South $80^{\circ}11'24''$ East a distance of 1351.11 feet;
Thence North $86^{\circ}27'27''$ East a distance of 461.25 feet;
Thence South $15^{\circ}01'25''$ West a distance of 63.29 feet to the True Point of Beginning.

PARCEL 8

Township 12 South, Range 18 East Boise Meridian, Twin Falls County, Idaho
Section 13: A parcel of land described on Reclamation Plan No. RP-849 and more particularly described as follows:

Starting at a point located in the Southeast corner of the $W\frac{1}{4}SE\frac{1}{4}$ as the True Point of Beginning;

Thence North parallel to the Section line 300 feet;
Thence West parallel to the Section line 1452 feet;
Thence parallel to the Section line 300 feet;
Thence East along the Southerly Section line 1,452 feet to the True Point of Beginning, as shown on Reclamation Plan No. RP-489.

PARCEL 10 (A)

Township 11 South, Range 18 East Boise Meridian, Twin Falls County, Idaho
Section 35: A parcel of land in the $SE\frac{1}{4}NE\frac{1}{4}$ more particularly described as follows:
Beginning at a point on the East Section line of Section 35 located approximately 1,889.51 feet South of the Northeast corner of said Section 35:
Thence North $82^{\circ}45'$ West approximately 513.79 feet to the Real Point of Beginning;
thence Northwesterly along a 1116.28 foot radius curve right having a long chord of 297.52 feet bearing North $75^{\circ}05'39''$
West approximately 298.32 feet to a point of tangency;

Thence North $67^{\circ}26'$ West approximately 197.68 feet;
Thence North $02^{\circ}07'36''$ West approximately 294.26 feet;
Thence South $39^{\circ}25'40''$ East approximately 55.25 feet;
Thence South $46^{\circ}02'54''$ East approximately 91.57 feet;
Thence South $48^{\circ}46'15''$ East approximately 157.60 feet;
Thence South $47^{\circ}15'48''$ East approximately 298.78 feet;
Thence South $51^{\circ}19'59''$ East approximately 53.76 feet to the Real Point of Beginning.

PARCEL 10 (B)

Township 11 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho
Section 35: A parcel of land in the $NW\frac{1}{4}NE\frac{1}{4}$ and the $NE\frac{1}{4}NE\frac{1}{4}$ and the $SE\frac{1}{4}NE\frac{1}{4}$ and being more particularly described as follows:

Commencing at the Northeast corner of Section 35;
Thence a distance of 1500.00 feet on a bearing of South along the East boundary of said Section 35; thence a distance of 803.92 feet on a bearing of North $89^{\circ}30'34''$ West to the Real Point of Beginning;
Thence from this Real Point of Beginning a distance of 1363.51 feet on a bearing of North $16^{\circ}14'53''$ West to the Southerly right of way of the Twin Falls Canal Company's High Line Canal;
Thence along the said Southerly right of way of the Twin Falls Canal Company's High Line Canal the following courses and distances;
North $58^{\circ}59'11''$ West 107.75 feet;
North $49^{\circ}07'49''$ West 83.96 feet;
North $39^{\circ}22'26''$ West 108.15 feet to the North boundary of said Section 35;
Thence a distance of 345.60 feet on a bearing of North $89^{\circ}35'57''$ West along the North boundary of said Section 35;

Thence along the centerline of an existing irrigation ditch the following courses and distances:
South 00°12'00" West 487.62 feet;
South 13°16'55" East 32.74 feet;
South 35°35'01" East 43.54 feet;
South 46°04'51" East 161.11 feet;
South 48°27'50" East 79.80 feet;
South 50°46'22" East 269.87 feet;
South 39°08'16" East 32.21 feet;
South 33°22'27" East 332.39 feet;
South 34°56'08" East 168.68 feet;
South 39°25'40" East 132.39 feet;
South 46°02'54" East 91.57 feet;
South 48°46'15" East 70.21 feet;
Thence a distance of 50.00 feet on a bearing of North 41°13'45" East to the Real Point of Beginning,

PARCEL 10 (C)

Township 11 South, Range 18 East Boise Meridian, Twin Falls County, Idaho
Section 35: A parcel of land in the SE¼NE¼ more particularly described as follows:
Commencing at the Northeast corner of Section 35;
Thence a distance of 1,500.00 feet on a bearing of South along the East boundary of said Section 35 to the Real Point of Beginning;
Thence from the Real Point of Beginning a distance of 803.92 feet on a bearing of North 89°30'34" West;
Thence a distance of 50.00 feet on a bearing of South 41°13'45" West
Thence along the centerline of an existing irrigation ditch the following courses and distances;
South 48°46'15" East 87.39 feet;
South 47°15'48" East 298.78 feet;
South 51°19'59" East 144.13 feet
South 61°52'29" East 128.44 feet;
Thence South 82°45'09" East 299.86 feet;
South 89°30'34" East 28.40 feet to the East boundary of said Section 35;
Thence a distance of 479.75 feet on a bearing of North long the East boundary of said Section 35 to the Real Point of Beginning.

EXCEPT

A Parcel of land in the SE¼NE¼ Section 35, Township 11 South, Range 18 E., B.M., Twin Falls County, Idaho, and being more particularly described as follows:
Commencing at the Northeast corner of Section 35;
Thence South a distance of 1889.33 feet along the East boundary of said Section 35 to the North boundary of a 60-foot-wide public road right of way and the Real Point of Beginning;
Thence from the Real Point of Beginning and continuing along the said East boundary of Section 35 South a distance of 60.48 feet to the South boundary of a 60-foot-wide public road right of way;
Thence along the South boundary of a 60-foot-wide public road right of way North 82°45'00" West a distance of 411.00 feet to the centerline of an irrigation ditch that existed in 1976;
Thence along the centerline of an irrigation ditch that existed in 1976 the following courses and distances:
North 61°52'59" West 35.68 feet;
North 51°19'59" West 90.94 feet to the North boundary of a 60-foot-wide public road right of way;
Thence along the North boundary of a 60-foot-wide public road right of way on a curve to the left having a central angle of 00°50'03"; a radius of 1115.92 feet; a tangent of 8.12 feet; and arc length of 16.25 feet and a long chord of 16.25 feet on a bearing of South 82°19'58" East;
Thence continuing along the North boundary of a 60-foot-wide public road right of way South 82°45'00" East a distance of 498.02 feet to the Real Point of Beginning.

SUBJECT TO a right of way 25 feet in width for the purpose of constructing and maintaining a public road along the East boundary thereof.

AND EXCEPT

A parcel of land in the SE¼NE¼, Section 35, Township 11 South, Range 18 E., B.M., Twin Falls County, Idaho, and being

more particularly described as follows:

Commencing at the Northeast corner of Section 35;

Thence South a distance of 1949.81 feet along the East boundary of said Section 35 to the Real Point of Beginning;

Thence from the Real Point of Beginning and continuing along the East boundary of Section 35 a distance of 29.94 feet;

Thence along the centerline of an irrigation ditch that existed in 1976 the following courses and distances;

North 89°30'34" West 28.40 feet;

North 82°45'09" West 299.86 feet;

North 61°52'29" West 92.76 feet to the South boundary of a 60-foot-wide public road right of way;

Thence along the South boundary of a 60-foot-wide public road right of way South 82°45'00" East a distance of 411.00 feet to the Real Point of Beginning.

SUBJECT TO a right of way 25 feet in width for the purpose of constructing and maintaining a public road along the East boundary thereof.

AND ALSO EXCEPT

A Parcel of land in the SE¼NE¼ Section 35, Township 11 South, Range 18 E., B.M., being 30 feet in width on each side of the following described centerline;

Beginning at a point on the East section line of Section 35 located approximately 1919.57 feet South of the Northeast corner of said Section 35;

Thence North 82°45' West approximately 468.4 feet to the centerline of an existing ditch;

Thence North 82°45' West approximately 33.44 feet to a point of curvature;

Thence Northwesterly along a 5° curve right having a central angle of 15°19' approximately 306.3 feet to a point of tangency;

Thence North 67°26' West approximately 222.6 feet to a point of curvature;

Thence Northwesterly along a 4° curve left having a central angle of 13°16'

approximately 331.7 feet to a point on curve, said point being on the West line of the SE¼NE¼ of said Section 35 located approximately 1677.63 feet North 51°45'16" West of the East quarter corner of said Section 35.

PARCEL 10 (D)

Township 11 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho

Section 35: A parcel of land in the NE¼NE¼ and the SE¼NE¼ and being more particularly described as follows:

Commencing at the Northeast corner of Section 35;

Thence a distance of 238.00 feet on a bearing of 89°35'37" West along the North boundary of said Section 35 to the Real Point of Beginning;

Thence from this Real Point of Beginning and continuing along the North boundary of Section 35 a distance of 343.81 feet on a bearing of North 89°35'37" West to the Southerly right of way of the Twin Falls Canal Company's High Line Canal;

Thence along the said Southerly right of way of the Twin Falls Canal Company's High Line Canal the following courses and distances;

South 41°39'03" West 160.59 feet;

South 58°00'40" West 143.60 feet;

South 71°23'46" West 80.59 feet;

South 81°53'16" West 50.72 feet;

North 87°08'07" West 124.86 feet;

North 74°43'29" West 126.09 feet;

North 58°59'11" West 2.50 feet;

Thence a distance of 1363.51 feet on a bearing of South 16°14'53" East;

Thence a distance of 803.92 feet on a bearing of South 89°30'34" East to the East boundary of said Section 35;

Thence along the said East boundary of Section 35 a distance of 1024.00 feet on a bearing of North;

Thence a distance of 238.00 feet on a bearing of North 89°35'37" West;

Thence a distance of 476.0 feet on a bearing of North to the Real Point of Beginning.

EXHIBIT D

SECURITY AGREEMENT

ASSN. NO.	B.O. NO.	CIF NO.
52	7616454400	5603978

1. **GRANT OF SECURITY INTEREST.** For value received, the undersigned Issuer, whether one or more, grants to Agri-Access®, * ("Investor"), whose address is at PO Box 7438, 3555 9th Street, Ste 400, Rochester MN, 55901 a security interest in all of the Issuer's rights, title, and interest in the property described in Section 2, including all rights to transfer an interest in the Collateral ("Collateral"), to secure the payment and performance of the obligations described in Section 3 ("Obligations"). All capitalized terms used in this Security Agreement shall have the meaning as set forth in the Bond Purchase Agreement, any Bonds issued thereunder, or in the Uniform Commercial Code (the "UCC"), as enacted in the State of Iowa, and as amended from time to time and such meanings shall automatically change at the time that any amendment to the UCC, which changes such meanings, shall become effective.
2. **COLLATERAL DESCRIPTION.** The Collateral is the property described as follows: All accounts receivables, accounts, deposit accounts, chattel paper, inventory, machinery, equipment, motor vehicles, fixtures, contract rights, investment property, payment intangibles and general intangibles, including, but not limited to, all trade names, customer lists, goodwill, telephone numbers, websites, & related assets, instruments, & investments of the issuer, and to the extent not included in the foregoing as original collateral, the proceeds and products of the foregoing.
3. **OBLIGATIONS SECURED.** "Obligations" means the obligation of the Issuer to:
 - a. Pay the entire principal balance of any and all Bonds (the "Bonds") in the original principal amount of \$9,000,000.00 dated December 10, 2007, issued pursuant to a Bond Purchase Agreement dated December 10, 2007 (the "Bond Purchase Agreement") between Issuer and Investor together with all amendments, extensions, renewals, and replacements thereof;
 - b. Pay all amounts, including, without limitation, interest, premiums, fees, attorneys' fees and legal expenses (to the extent permitted by applicable law), for which Issuer is liable under the Bond, the Bond Purchase Agreement or any Bond Security Document; and
 - c. Perform and observe all of the warranties, agreements and terms set forth in the Bonds, the Bond Purchase Agreement and the Bond Security Documents, and any and all documents related thereto, as they may be amended, modified, extended, or restated.
4. **ISSUER'S DUTIES REGARDING COLLATERAL.**
 - 4.1 **Ownership Warranty.** Issuer warrants that Issuer is the absolute owner of all Collateral free of all interests, liens, encumbrances, options and security interests except: (a) Investor's security interest and (b) those disclosed to Investor by Issuer in writing and accepted by Investor.
 - 4.2 **Residence and Location.** Issuer's principal place of business, or, if Issuer is a Registered Organization, the State of Organization, is in the state shown above Issuer's signature. The Issuer has provided the Investor with information concerning the location of the Collateral and the Issuer warrants to the Investor that such information is true, accurate, and complete. Except with the prior written consent of the Investor and not in the event of default, the Issuer shall not remove any Collateral from any location as provided to the Investor except as disposed of as inventory in the ordinary course of business. Issuer shall immediately inform Investor in writing of any change in Issuer's address or the location of the Collateral.
 - 4.3 **Records and Reports.** Issuer shall keep permanent records of all material information on the acquisition, maintenance, identification and disposition of all Collateral in a form acceptable to Investor. Investor shall have the right to examine and copy these records at reasonable times and places. Issuer's records are kept at Issuer's present residence and shall not be removed from the state of Issuer's present residence. Issuer agrees to furnish Investor with written reports on the Collateral with content and at times as Investor may reasonably request.
 - 4.4 **Maintenance of Collateral.** Issuer shall: (a) care for the Collateral in accordance with good commercial practices and not permit its value to be impaired; (b) keep it free from all liens, encumbrances and security

* Agri-Access® is a division and trademark of AgStar Financial Services, ACA. All references to Investor herein shall refer to AgStar Financial Services, ACA.

SECURITY AGREEMENT (Page 2 of 5)

interests (other than those created or expressly permitted by this Agreement or the Bond Purchase Agreement); (c) defend it against all claims and legal proceedings by persons other than Investor; (d) pay and discharge when due all taxes, license fees, levies and other charges upon it; (e) not permit it to become a fixture or an accession to other goods except as specifically authorized in a writing signed by Investor; and (f) not permit it to be used in violation of any law, regulation or policy of insurance. Loss of or damage to the Collateral shall not release Issuer from any of the Obligations.

4.5 **Insurance.** Issuer shall keep all Collateral and Investor's interest in it insured pursuant to the provisions of the Bond Purchase Agreement.

4.6 **Inspection.** Issuer shall permit and assist Investor to verify and inspect the Collateral wherever located at reasonable times.

5. **DEFAULT.**

5.1 **Default by Issuer.** Each of the following constitutes a default under this Agreement by Issuer ("Default"): (a) Failure to pay when due any principal, interest, advances, late charges, costs, attorneys' fees or other charges incurred on any of the Obligations; (b) The sale or other disposition of any of the Collateral when it is not authorized by this Agreement; (c) Failure to perform or observe any warranty, agreement or obligation contained in this Agreement or in any Bond Security Agreement, Bond application or any evidence of or document relating to any of the Obligations; (d) Any warranty or information given to Investor in connection with this Agreement or any of the Obligations is false in any material respect when made; (e) Loss, theft, substantial damage, destruction or encumbrance of any of the Collateral or the making of any levy, seizure or attachment against it; (f) The acceleration of the maturity of Issuer's indebtedness to any other creditor; (g) The death, dissolution or termination of existence, insolvency, business failure, appointment of a receiver for any property, assignment for the benefit of creditors, the commencement of any proceeding under any bankruptcy or insolvency laws, of, by, or against Issuer or any guarantor or surety of Issuer; (h) Failure of any of Issuer's account debtors or obligors to make payment when due or to honor Investor's security interest; (i) The occurrence of any event which causes Investor in good faith to believe that the Obligations are inadequately secured or the prospect of payment, performance or realization on the Collateral is impaired.

5.2 **Investor's Remedies.** Investor, in addition to other rights and remedies provided in this Agreement or in any evidence of or document associated with the Obligations or provided by law, may do any one or more of the following if a Default occurs under Section 5.1: (a) Declare any or all Obligations immediately due and payable; (b) Refuse to make advances under any commitment; (c) Exercise all rights and remedies of a Investor under the Uniform Commercial Code; (d) Without notice to the Issuer or judicial process, peaceably enter upon any premises where the Collateral is located, take possession of all or any part of it, and remove it from the premises; (e) Require Issuer at Issuer's expense to assemble all or part of the Collateral as directed by Investor and make it available to Investor at a place to be designated by Investor which is reasonably convenient to both parties; (f) Sell, lease or otherwise dispose of all or any part of the Collateral, without notice to Issuer except as required by law, in one or more parcels at public or private proceeding on such terms as Investor may deem commercially reasonable; (g) Occupy and use the Issuer's premises to preserve and care for Collateral; (h) Collateral that is perishable and may decline rapidly in value and Investor at Issuer's expense may protect, preserve, take possession, and sell such Collateral at private sale; (i) Require Issuer to reimburse Investor out of proceeds from the disposition of Collateral or otherwise for expenses incurred by Investor in protecting or enforcing its rights under this Agreement. These expenses include the expenses of retaking, holding, preparing for sale or other disposition, and selling or disposing of the Collateral and, to the extent not prohibited by law, attorneys' fees and legal expenses. Investor may charge these expenses to any of the Obligations and Issuer shall pay them upon demand with interest from the date incurred at the rate in effect on the date incurred on the applicable Obligation. After deduction of these expenses, Investor may apply the proceeds of disposition to the Obligations in the order and amounts it elects.

5.3 **Commercially Reasonable.** In addition to other means which are commercially reasonable: (a) commercially reasonable notice is written notice sent to any address of Issuer given by Issuer to Investor in conjunction with this Agreement at least 10 calendar days (counting the day of sending) before the date of a proposed disposition of Collateral; and (b) commercially reasonable means of disposition of Collateral includes a sale through a market of that type of Collateral and through a licensed sales company for the type of Collateral disposed of.

6. **MISCELLANEOUS PROVISIONS.**

- 6.1 **True Information.** Issuer warrants that all information, statements and warranties given by or on behalf of Issuer to Investor in connection with this Agreement or the Obligations are true and correct.
- 6.2 **Collections.** (a) At any time Investor may, and Issuer shall upon request, notify Issuer's account debtors and obligors on instruments to make payment directly to Investor. Investor may enforce collection of, settle, compromise, extend or renew the indebtedness of such account debtors and obligors. Unless this notification is given, Issuer, as agent of Investor, shall collect accounts and instruments. (b) When required by Investor, all proceeds of Collateral received by Issuer shall be held by Issuer upon an express trust for Investor, shall not be commingled with any other funds or property of Issuer and shall be turned over to Investor in precisely the form received (but endorsed by Issuer, if necessary for collection) not later than the third business day following the date of receipt. All proceeds of Collateral received by Investor directly or from Issuer shall be applied against the Obligations in such order and at such time as Investor shall determine.
- 6.3 **Maintenance of Security Interest.** To the extent permitted by law, Issuer shall pay all expenses, and upon request take any action reasonably deemed advisable by Investor, to preserve the Collateral or to establish, determine priority of, perfect, continue as perfected, preserve, enforce or terminate Investor's rights and interests under this Agreement.
- 6.4 **Power of Attorney.** Issuer hereby irrevocably appoints Investor as Issuer's attorney-in-fact to act for Issuer with full authority in the place and name of Issuer to take any action and to execute any instrument which the Investor may deem advisable to accomplish the purposes of this Agreement, including authority: (a) to endorse, collect, sue for, compromise and receive any drafts, instruments, documents or moneys due in connection with the Collateral; (b) to file any claims or take any action or institute any proceedings which Investor may deem desirable for the collection of any of the Collateral or otherwise to enforce the rights of Investor with respect to any of the Collateral; (c) to disburse funds including paying insurance premiums, taxes, liens, and other costs of preserving the Collateral; and (d) to establish, determine priority of, perfect, continue as perfected, preserve, correct, enforce or terminate Investor's rights and interests under this Agreement. Investor may charge its expenses of doing so to any of the Obligations and Issuer shall pay them upon demand with interest from the date incurred at the rate in effect on the date incurred on the applicable Obligation.
- 6.5 **Unauthorized Disposition and False Statements.** Issuer understands that the unauthorized disposition of Collateral or making a false statement or report to Investor in connection with a Bond could result in civil and criminal consequences to Issuer (Federal Statutes 18 U.S.C. 658 and 1014).
- 6.6 **Waiver.** The failure or delay of Investor to enforce any right shall not be construed as a waiver of the right. Investor's waiver of any default shall not constitute a waiver of any prior or subsequent default. Investor waives only those rights specified in a writing signed by Investor. The provisions of this Agreement shall not be modified or waived by any course of dealing or trade usage.
- 6.7 **Investor Not Liable.** Investor has no duty to exercise or to withhold the exercise of any of the rights and powers expressly or implicitly granted to it in this Agreement and shall not be responsible for any failure to do so or delay in so doing. Investor has no duty to protect, insure or realize upon the Collateral. Issuer releases Investor from all liability for any act or omission relating to the Obligations, the Collateral or this Agreement except Investor's willful misconduct.
- 6.8 **Persons Bound.** Each person signing this Agreement, other than the Investor, is an Issuer. The Obligations of all Issuers are joint and several, and all Issuers hereby acknowledge receipt of all proceeds of the Bond. This Agreement benefits Investor, its successors, and assigns. This Agreement binds the Issuer, the Issuer's heirs, personal representatives, successors, and assigns, and all persons who become bound as an Issuer under this Agreement.
- 6.9 **Agency.** Until Investor is prospectively notified in writing by Issuer to the contrary, Investor may rely upon the following: (a) If Issuer is two or more individuals, the act or signature of any one of them shall bind them all; (b) If Issuer is a partnership, each partner is fully authorized to act for the partnership in all matters governed by this Agreement; (c) If Issuer is a corporation, each officer is fully authorized individually to act for and bind the corporation in all matters governed by this Agreement (d) if issuer is a limited liability company, each manager is fully authorized individually to act for and bind the limited liability company in all matters governed by this Agreement.

- 6.10 **Cumulative Rights.** All rights and remedies of Investor in this Agreement are cumulative and are in addition to other rights and remedies given in this Agreement or in any evidence of or document associated with the Obligations or provided by law.
- 6.11 **Termination.** This Agreement shall continue in effect for all Obligations to Investor arising prior to the filing of a UCC Termination Statement covering all Collateral. Issuer instructs Investor not to file a UCC Termination Statement until requested by Issuer.
- 6.12 **Interpretation.** This Agreement shall be governed by the laws of the state in which Investor's office originating the credit is located. In this Agreement, "including" means "including but not limited to" and indicates an illustrative and incomplete listing.
- 6.13 **Intentionally Omitted.**
- 6.14 **Public Filings.** The Issuer hereby authorizes the Investor to file all financing statements describing the Collateral, and all amendments thereto, in any offices as the Investor, in its sole discretion, may determine. The Issuer hereby also authorizes the Investor to file all effective financing statements describing the Collateral pursuant to 7 U.S.C. Section 1631, and all amendments thereto, in any offices as the Investor, in its sole discretion, may determine.
- 6.15 **Government Program Payments.** If the Collateral includes federal or state government program entitlements or payments, the Issuer shall execute and deliver to the Investor all assignments, transfers, and other documents required by the Investor to transfer, convey, and assign to the Investor all such federal and state government program entitlements, payments, rights to payment whether or not earned by performance, accounts, general intangibles, and benefits.
- 6.16 **Issuer Names.** For each Issuer that is not an individual, the legal name of each such Issuer is as set forth in the Bond or an addendum thereto, or in this Agreement. No Issuer has used any trade name, assumed name, or other name except those set forth in the Bond or an addendum thereto, or in this Agreement. The Issuer shall give the Investor written notice at least 30 days before the date of (1) any change in any Issuer's name or (2) any use by any Issuer of another name.
- 6.17 **Registered Organizations.** If any Issuer is a Registered Organization, as that term is defined in the UCC, all information provided by such Issuer to the Investor concerning the state of organization for such Issuer is true, accurate, and complete. No Issuer shall change its state of organization without the prior written consent of the Investor. Issuer shall provide the Investor with written notice at least 30 days before the date any Issuer takes any action to change its state of organization.
- 6.18 **Addresses of Issuer.** If any Issuer is an individual or an entity that is not a Registered Organization, all information provided by the Issuer to the Investor concerning the address of an individual Issuer's residence or the address of the chief executive office of an entity that is not a Registered Organization is true, accurate, and complete. No individual Issuer shall change that address of residence without providing written notice to the Investor at least 30 days before the effective date of such address change. No Issuer that is an entity that is not a Registered Organization shall change that address of the chief executive office without providing written notice to the Investor at least 30 days before the effective date of such address change.
- 6.20 **Purchase Money Security Interests.** To the extent that the Issuer uses proceeds of the Bond extended by the Investor to purchase Collateral, Issuer's repayment of the Bond shall apply on a "first-in-first-out" basis so that the portion of the Bond used to purchase a particular item of the Collateral shall be paid in the chronological order the Issuer purchased the Collateral.
- 6.21 **Reporting.** The Investor, its agents, successors, and assigns may report Issuer's names and information regarding this Bond and all of Issuer's past and future bonds to credit reporting agencies.
- 6.22 **Authorization for Access to Information.** Issuer acknowledges and agrees that the verification or reverification of any information, whether contained in the Issuer's Bond application or in any other manner supplied by the Issuer to the Investor in connection therewith, may be made at any time by the Investor, its agents, successors, or assigns, either directly or through a credit reporting agency, from any source whether named in the Issuer's Bond application or otherwise provided to the Investor by the Issuer.
- 6.23 **Modification.** No modification of this document or any related document shall be enforceable unless in writing and signed by the party against whom enforcement is sought. **Oral agreements or commitments to**

SECURITY AGREEMENT (Page 5 of 5)

loan money, extend credit, or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable, regardless of the legal theory upon which it is based that is in any way related to the credit agreement. To protect you (the Issuer) and us (the Investor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.

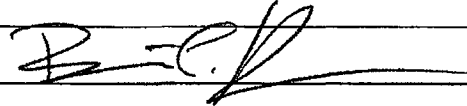
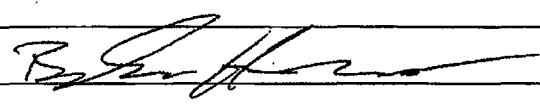
THIS AGREEMENT INCLUDES ALL THE PROVISIONS ON ADDITIONAL PAGES OF THIS AGREEMENT. BY SIGNING, ISSUER ACKNOWLEDGES THAT ISSUER HAS READ ALL OF THESE PROVISIONS AND HAS RECEIVED AN EXACT COPY OF THIS AGREEMENT.

Issuer's State(s) of Residence or Organization: Idaho

Dated: 12-10, 2007

ISSUER:

Gordon Paving Co., Inc., an Idaho Corporation
Northwest Sand & Gravel, Inc., an Idaho Corporation
Blackrock Land Holdings.LLC, an Idaho Limited Liability Company

By 	By 
Name: Brian Hansen, in his capacity as Secretary of Gordon Paving Company, Inc., Secretary of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, LLC	Name: Brandon Hansen, in his capacity as Vice President of Gordon Paving Company, Inc., Vice President of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, LLC

GP:2066199 v1

EXHIBIT E

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional] Phone: (800) 331-3282 Fax: (818) 662-4141	
B. SEND ACKNOWLEDGEMENT TO: (Name and Address) UCC Direct Services P.O. Box 29071 Glendale, CA 91209-9071 13104132 ID, Secretary of State	

UCC Direct Services
Representation of filing**This filing is Completed**
File Number : B200810395254
File Date : 08-JAN-2008

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name(1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION NAME GORDON PAVING COMPANY, INC.				
OR				
1b. INDIVIDUAL LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 837 MADRONA STREET SOUTH		CITY TWIN FALLS	STATE ID	POSTAL CODE 83301
1d. SEE INSTRUCTIONS		ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION Corporation	1f. JURISDICTION OF ORGANIZATION ID
			1g. ORGANIZATIONAL ID#, if any C34027	
			<input type="checkbox"/> NONE	

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name(2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION NAME NORTHWEST SAND & GRAVEL, INC.				
OR				
2b. INDIVIDUAL LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS 837 MADRONA STREET SOUTH		CITY TWIN FALLS	STATE ID	POSTAL CODE 83301
2d. SEE INSTRUCTIONS		ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION Corporation	2f. JURISDICTION OF ORGANIZATION ID
			2g. ORGANIZATIONAL ID#, if any C34027	
			<input type="checkbox"/> NONE	

3. SECURED PARTY'S (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION NAME AGRI-ACCESS, A DIVISION OF AGSTAR FINANCIAL SERVICES, ACA				
OR				
3b. INDIVIDUAL LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 3555 9TH ST NW, Suite400		CITY ROCHESTER	STATE MN	POSTAL CODE 55901
				COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:

ALL ACCOUNTS RECEIVABLES, ACCOUNTS, DEPOSIT ACCOUNTS, CHATTEL PAPER, INVENTORY, MACHINERY, EQUIPMENT, MOTOR VEHICLES, FIXTURES, CONTRACT RIGHTS, INVESTMENT PROPERTY, PAYMENT INTANGIBLES AND GENERAL INTANGIBLES, INCLUDING, BUT NOT LIMITED TO, ALL TRADE NAMES, CUSTOMER LISTS, GOODWILL, TELEPHONE NUMBERS, WEBSITES, & RELATED ASSETS, INSTRUMENTS, & INVESTMENTS OF THE ISSUER; AND TO THE EXTENT NOT INCLUDED IN THE FOREGOING AS ORIGINAL COLLATERAL, THE PROCEEDS AND PRODUCTS OF THE FOREGOING.

5. ALTERNATE DESIGNATION [if applicable]:				
<input type="checkbox"/> LEASEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG.LIEN
<input type="checkbox"/> NON-UCC FILING				
6. [] This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS				
Attach Addendum [if applicable]				
[Check to REQUEST SEARCH REPORT(S) on Debtor(s)]				
[ADDITIONAL FEE] [optional]				
<input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2				
8. OPTIONAL FILER REFERENCE DATA				
27733196				
Scott Jarck				

UCC FINANCING STATEMENT ADDITIONAL PARTY

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION NAME GORDON PAVING COMPANY, INC.			
OR	9b. INDIVIDUAL LAST NAME	FIRST NAME	MIDDLE NAME

10. MISCELLANEOUS

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

21. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name(21a or 21b) - do not abbreviate or combine names

21a. ORGANIZATION NAME BLACKROCK LAND HOLDINGS, L.L.C.				
OR	21b. INDIVIDUAL LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
21c. MAILING ADDRESS 837 MADRONA STREET SOUTH		CITY TWIN FALLS	STATE ID 83301	COUNTRY USA
21d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	21e. TYPE OF ORGANIZATION LLC	21f. JURISDICTION OF ORGANIZATION ID	21g. ORGANIZATIONAL ID#, if any W39958 <input type="checkbox"/> NONE

22. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name(22a or 22b) - do not abbreviate or combine names

22a. ORGANIZATION NAME				
OR	22b. INDIVIDUAL LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
22c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
22d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	22e. TYPE OF ORGANIZATION	22f. JURISDICTION OF ORGANIZATION	22g. ORGANIZATIONAL ID#, if any <input type="checkbox"/> NONE

23. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name(23a or 23b) - do not abbreviate or combine names

23a. ORGANIZATION NAME				
OR	23b. INDIVIDUAL LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
23c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
23d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	23e. TYPE OF ORGANIZATION	23f. JURISDICTION OF ORGANIZATION	23g. ORGANIZATIONAL ID#, if any <input type="checkbox"/> NONE

24. ADDITIONAL SECURED PARTY'S (or NAME of TOTAL ASSIGNEE) - insert only one secured party name (24a or 24b)

24a. ORGANIZATION NAME				
OR	24b. INDIVIDUAL LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
24c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY

25. ADDITIONAL SECURED PARTY'S (or NAME of TOTAL ASSIGNEE) - insert only one secured party name (25a or 25b)

25a. ORGANIZATION NAME				
OR	25b. INDIVIDUAL LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
25c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY

EXHIBIT F

BOND PURCHASE AGREEMENT

Dated as of April 30, 2008

The undersigned, Gordon Paving Company, Inc., an Idaho corporation, Northwest Sand & Gravel, Inc., an Idaho Corporation, and Blackrock Land Holdings, L.L.C., an Idaho Limited Liability Company, with each having a principal office located at 837 Madrona Street South, Twin Falls, Idaho 83301 (the "**Issuer**"), hereby confirms its agreements set forth below with Agri-Access®,* a federally chartered corporation with principal offices at PO Box 7438, 3555 9th Street, Ste 400, Rochester MN, 55901 (the "**Investor**").

1. Definitions. As used in this Agreement, the following terms have the following meanings. Terms not otherwise defined in this Agreement have the meanings attributed to them in the Uniform Commercial Code, as amended from time to time, or in any Bond or in any Bond Security Document. All references to dollar amounts mean amounts in lawful money of the United States of America.

"**Affiliate**" means and includes, but is not limited to: (a) any director, officer or employee of the Issuer or (b) any person who, directly or indirectly either individually or together with his spouse, his lineal descendants and ascendants and brothers and sisters by blood or adoption or spouses of such descendants, ascendants, brothers and sisters, beneficially owns 5% or more of the voting capital stock of the Issuer or (c) any spouse, lineal descendant or ascendant, brother or sister, by blood, adoption or marriage, of any person listed in clause (a) or (b) above, and spouses of such ascendants, descendants, brothers and sisters or (d) any company in which any person described in clause (a), (b) or (c) above owns a 5% or greater equity interest.

"**Agreement**" means this Bond Purchase Agreement between Issuer and Investor dated as of the date set forth above, including all related schedules, exhibits and addenda.

"**Bond**" or "**Bonds**" has the meaning set forth in Section 2(a).

"**Bond Register**" has the meaning set forth in Section 10.

"**Bond Security Document/Bond Security Documents**" means collectively, if applicable, the Mortgage, Security Agreement, and such other control agreements, assignments, agreements or documents as may be required by the Investor pursuant to the terms of this Agreement.

"**Capital Expenditures**" mean the cost of any fixed assets or improvements, replacements, substitutions or additions thereto which have a useful life of more than one year, including the direct or indirect acquisition of such assets by way of purchase, capitalized lease, increased product or service charges, offset items or otherwise.

"**Capitalized Lease Obligations**" mean lease payment obligations under leases that are required to be capitalized under GAAP.

"**Closing Date**" has the meaning set forth in Section 2(a).

"**Collateral**" means and includes, without limitation, all property and assets, now owned or hereafter acquired, granted as collateral security for the Bond in the Mortgage, Security Agreement or

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* Agri-Access® is a division and trademark of AgStar Financial Services, ACA. All references to Investor herein shall refer to AgStar Financial Services, ACA.

Bond Security Document, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, whether granted in the form of a security interest, mortgage, assignment of rents, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device or any other security or lien interest whatsoever, whether created by law, contract or otherwise.

"Cumulative Net Income" means the excess, if any, of:

(a) the sum of (i) Net Income, if any, for each completed fiscal year of the Issuer commencing on or after December 31, 2008, and (ii) Net Income, if any, for any completed month ending after the end of the most recently completed fiscal year of the Issuer; and

(b) the sum of (i) Net Loss, if any, for each completed fiscal year of the Issuer commencing on or after December 31, 2008, and (ii) Net Loss, if any, for any completed month ending after the end of the most recently completed fiscal year of the Issuer.

"Cumulative Net Loss" means the excess, if any, of:

(a) the sum of (i) Net Loss, if any, for each completed fiscal year of the Issuer commencing on or after December 31, 2008, and (ii) Net Loss, if any, for any completed month ending after the end of the most recently completed fiscal year of the Issuer; and

(b) the sum of (i) Net Income, if any, for each completed fiscal year of the Issuer commencing on or after December 31, 2008 and (ii) Net Income, if any, for any completed month ending after the end of the most recently completed fiscal year of the Issuer.

"Current Assets" mean, as of any date, the current assets of the Issuer determined in accordance with GAAP consistent with those followed in preparation of the Financial Statements referred to in Section 3(e).

"Current Debt" means any obligation for borrowed money payable within 12 months of the date of its creation and not renewable or extendible without the consent of the Investor; provided, however, that any obligation will be treated as Current Debt, regardless of its term, if such obligation arises under a revolving credit or similar arrangement.

"Current Liabilities" mean, as of any date, the current liabilities of the Issuer (including the current portion of Funded Debt), determined in accordance with GAAP consistent with those followed in preparation of the Financial Statements referred to in Section 3(e).

"Current Maturities of Long Term Debt" means the portion of Issuer's Long Term Debt that is payable in the next 12 months as measured in accordance with GAAP.

"Debt Coverage Ratio" means the sum of Net Income, interest, depreciation, depletion and amortization divided by the Current Maturities of Long Term Debt, and interest, determined in accordance with GAAP.

"Distribution" means any dividend, distribution, payment or transfer of property by the Issuer to any member of the Issuer.

"Dividends" mean any payment in cash, property or other assets upon or in respect of any shares of any class of capital stock including, without limiting the foregoing, payments as dividends and payments for the purpose of redeeming, purchasing, or otherwise acquiring any shares of any class of its capital stock, including in the term "stock" any warrant or option or other right to purchase

such stock, or making any other distribution in respect of any such shares of stock; excluding, however, any distribution which may be payable solely in common stock of the corporation making the distribution.

"Equipment" means the equipment of the Issuer listed on **Schedule 1.0**.

"ERISA" means the Employee Retirement Income Security Act of 1974 and the regulations adopted pursuant thereto.

"ERISA Affiliate" means each trade or business (whether or not incorporated) which, together with the Issuer, would be deemed to be a single employer within the meaning of Section 4001(b)(1) of ERISA.

"Event of Default" has the meaning set forth in Section 7.

"Fixed Charges" mean, for any period, all interest expense on all indebtedness and Current Maturities of Long Term Debt and current maturities of Capital Lease Obligations, income taxes, and plus or minus other charges as deemed necessary by Investor.

"Funded Debt" means any obligation for borrowed money or for the acquisition of property or any obligation evidenced by a promissory note, bond, or similar instrument, payable more than one year from the date of its creation (or which is renewable at the option of the obligor to a date more than one year from the date of its creation), including the current portion thereof, which under GAAP is shown on the balance sheet as a liability, including but not limited to the Bond and any Capitalized Lease Obligations.

"GAAP" means United States generally accepted accounting principles, consistently applied, for the period in question.

"Guarantor(s)" mean person(s) or entities executing a separate Guaranty as described in Section 2(c).

"Guaranty" has the meaning set forth in Section 2(c).

"Investor" has the meaning set forth in the preamble.

"Issuer" has the meaning set forth in the preamble.

"Long Term Debt" means any obligation for borrowed money payable more than one year after its creation that is not Current Debt, including but not limited to Bonds.

"Margin Stock" has the meaning ascribed to that term in Section 221.2 of Regulation U (12 CFR 221) of the Board of Governors of the Federal Reserve Board.

"Material Adverse Effect" means any set of circumstances or events which: (a) has or could reasonably be expected to have any material adverse effect upon the validity or enforceability of this Agreement, the Bond or any Bond Security Document or any material term or condition contained therein; (b) is or could reasonably be expected to be material and adverse to the condition (financial or otherwise), business assets, operations, or property of the Issuer; or (c) materially impairs or could reasonably be expected to materially impair the ability of the Issuer to perform the obligations under this Agreement, the Bond or any Bond Security Document.

"Minimum Fixed Charge Coverage Ratio" means, the net income before taxes, plus interest expense plus depreciation plus depletion plus amortization divided by total debt service plus capital expenditures. This ratio shall be calculated on a consolidated basis on an annual basis from the issuers' FYE financial statements.

"Mortgage" has the meaning set forth in Section 2(d)(i).

"Mortgaged Property" has the meaning set forth in Section 2(d)(i).

"Net Income (Net Loss)" means, for any period, the net after-tax income (or net loss) of the Issuer determined in accordance with GAAP consistent with those followed in preparation of the Financial Statements referred to in Section 3(e).

"Net Income Available for Fixed Charges" mean, for any period, the total of the following calculated for the Issuer for such period: (i) net income; plus (ii) any provision for (or less any benefit from) income taxes included in determining such net income; plus (iii) interest expense deducted in determining such net income; and plus (iv) amortization and depreciation expense deducted in determining such net income.

"Net Worth" means the total assets of Issuer minus the total liabilities of Issuer, as determined in accordance with GAAP.

"PBGC" means the Pension Benefit Guaranty Corporation established under ERISA, or any successor thereto.

"Plan" means any employee pension benefit plan within the meaning of Section 3(2) of ERISA.

"Purchase Price" has the meaning set forth in Section 2(a).

"Security Agreement" has the meaning set forth in Section 2(d)(ii).

"Security Interest" means and includes, without limitation, any type of collateral security, whether in the form of a lien, charge, mortgage, assignment of rents, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest, whether created by law, contract, or otherwise.

"Total Capitalization" means, as of any date, the sum of Net Worth and Funded Debt (excluding the current portion thereof).

2. Purchase and Sale of Bond

- a) The Bond. Subject to the terms and conditions in this Agreement, the Issuer will sell to the Investor on or before April 30, 2008, (the date of sale being herein called the **"Closing Date"**), and the Investor will purchase from the Issuer on the Closing Date, the Bond (the **"Bond"**), for the principal amount of \$1,000,000.00 (the **"Purchase Price"**), dated as of the Closing Date. The payment of principal, computation and payment of interest, amortization, maturity and other terms and conditions of the Bond are as provided in the Bond.
- b) Disbursements. The Purchase Price will be disbursed to the Issuer against delivery of the Bond on the Closing Date.

- c) Guaranty. The due and punctual payment by the Issuer of the principal of, premium, if any, and interest on the Bond, and the performance by the Issuer of the terms and conditions of this Agreement, the Bond and the Bond Security Documents shall be unconditionally and irrevocably guaranteed by Craig Hansen GPC Nevada Trust, the Carol Hansen GPC Nevada Trust, Brandon Hansen, individually, and Brian Hansen, individually, the Guarantors as described in Section 2(c) pursuant to a guaranty agreement, of even date with this Agreement (the "**Guaranty**"), in a form acceptable to the Investor. The United States Department of Agriculture will also be providing a guaranty of 80 percent of the Bond pursuant to the USDA program.
- d) Security. Payment of any and all Bonds and the obligations of the Issuer under this Agreement shall be secured by the Bond Security Documents, including but not limited to:
- i) a mortgage or deed of trust of even date with this Agreement (the "**Mortgage**"), in a form acceptable to the Investor, subject to no other liens or encumbrances except as may be acceptable to the Investor, on the real property described in the Mortgage (the "**Mortgaged Property**");
 - ii) a security agreement of even date with this Agreement (the "**Security Agreement**") in a form acceptable to the Investor by which Security Agreement the Issuer shall grant a Security Interest in the Collateral described therein, subject to no other liens or encumbrances (except to the extent permitted by Section 5(h) hereof);
 - iii) a Security Interest, subject to no other liens or encumbrances (except to the extent permitted by Section 5(h) hereof), in Collateral described in any other Bond Security Document of even date with this Agreement in a form acceptable to the Investor.
- e) Purchase Price Payment. The Investor will pay the Purchase Price for the Bond by wire transfer of immediately available Federal funds to such accounts as shall be specified by the Issuer, or in such other funds or in such other manner as may be mutually agreed upon by the Investor and the Issuer, against delivery to the Investor of the Bond.
- f) Maximum Rate. Notwithstanding anything to the contrary in the Bond, this Bond Purchase Agreement or any of the Bond Security Documents, Issuer shall not be required to pay unearned interest on the Bond, or ever be required to pay interest on the Bond at a rate in excess of the Maximum Rate, if any. If the effective rate of interest which would otherwise be payable under the Bond, this Bond Purchase Agreement or any of the Bond Security Documents would exceed the Maximum Rate, if any, then the rate of interest which would otherwise be contracted for, charged, or received under the Bond, this Bond Purchase Agreement or any of the Bond Security Documents shall be reduced to the Maximum Rate, if any. For purposes of the Bond and this Bond Purchase Agreement, "Maximum Rate" means the maximum nonusurious interest rate, if any, at any time, or from time to time, that may be contracted for, taken, reserved, charged or received under applicable state or federal laws.
- g) Funds Held Program. Investor may offer a Funds Held Program ("Program") that allows Issuer to make advance conditional payments on designated Bonds. Investor reserves the right, in its discretion, to amend or terminate the Program. The following terms and conditions apply to all Program accounts in connection with Issuer's Bonds.
- (i) Subject to Investor's rights to direct the application of payments, an advance payment made to be applied to future maturities on a Bond will be placed in a Program account ("Account") as of the date received. If a special prepayment of principal is desired, Issuer must so specify when an advance payment is made.

(ii) Interest will accrue on funds in the Account at such times and at such rates as per Investor's Program. Investor may change the interest rate or accrual period from time to time without notice. The Program may provide for different interest rates for different categories of bonds.

(iii) When a Bond installment or other related charge becomes due, funds in the Account for that Bond will be automatically applied on the due date toward payment of the installment or related charge. Any accrued interest in the Account will be applied first. If the funds in the Account are not adequate to pay the entire installment or related charge, Issuer must pay the difference by the installment due date.

(iv) Funds received after a Bond installment or related charge has been billed will be applied to the installment or related charge due. Funds received in excess of the billed installment amount or related charge will be placed in the Account.

(v) Even though no installment or related charge is due, Investor may, at its option, apply funds from the Account without notice to Issuer as follows:

(a) Protective Advances. If Issuer fails to pay when due other items Issuer is required to pay pursuant to any Bond document, Investor may apply funds in the Account to pay them.

(b) Account Ceiling. If the Account balance exceeds the unpaid balance on the Bond, Investor may apply the funds in the Account to pay off the Bond and will return any excess funds.

(c) Transfer of Security. If Issuer sells, assigns, or transfers any interest in any Collateral for the Bond, Investor may apply the funds in the Account to the remaining Bond balance.

(d) Termination of Program. If Investor decides to terminate the Program, it may apply all funds in the Account to the remaining Bond balance effective on the termination date.

(e) Investor may, in its discretion, permit Issuer to withdraw funds from the Account in accordance with Investor's Program.

(vi) Neither the advance payments nor the accrued interest in an Account are insured by a governmental agency or instrumentality. If Investor is placed in liquidation, Issuer shall be sent by the receiver such notices as required by FCA regulations then in effect. Such regulations currently provide for advance notice from the receiver that funds in the Account will be applied to the Bond and that funds in the Account will not earn interest after the receiver is appointed.

3. Representations and Warranties. The Issuer represents and warrants to the Investor as follows:

- a) Organization. Two of the Issuer's are corporations and one of the Issuer's is a limited liability company, each of which is organized, existing and in good standing under the laws of the States of its respective organization, and is duly qualified to do business and is in good standing under the laws of each State where the nature of the business done or property owned require such qualification. Each Issuer is organized under the laws of the State of Idaho. The respective Issuer's do not own, directly or indirectly, more than 1 % of the total

outstanding capital stock of any class of any other corporation, limited liability company, partnership or other entity.

- b) Conflicting Agreements and Other Matters. Neither the execution and delivery by the Issuer of this Agreement, the Bond or Bond Security Documents, nor the performance or observance by the Issuer of any of the terms or conditions of this Agreement, the Bond or Bond Security Documents,
- i) will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any lien upon any of the properties or assets of the Issuer pursuant to, the Articles of Incorporation or Bylaws of the Issuer, any award of any arbitrator, or any indenture, contract or agreement, including any agreement with a stockholder, member or partner, instrument, order, judgment, decree, statute, law rule or regulation to which the Issuer is subject;
 - ii) or require any registration or filing with, or any consent or approval of, any federal, state or local governmental agency or authority.
- c) Due Authorization. The execution and delivery of this Agreement, the Bond and the Bond Security Documents have been duly authorized by all necessary entity actions of the Issuer.
- d) Legal Proceedings. Except for matters disclosed on **Schedule 3(d)** hereto, there are no actions, suits, or proceedings pending or, to the knowledge of the Issuer, threatened against the Issuer or any property of the Issuer in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to the Issuer, would have a Material Adverse Effect upon the Issuer or upon the business or properties of the Issuer.
- e) Financial Statements. The Issuer has furnished to the Investor a balance sheet, statement of income and retained earnings, and statement of cash flows of the Issuer more fully described in attached **Schedule 3(e)** (collectively the "**Financial Statements**"). The Financial Statements fairly present the financial condition of the Issuer at the date(s) thereof and the results of operations of the Issuer for the period(s) indicated, all in conformity with GAAP. There have been no changes causing a Material Adverse Effect in the condition, financial or otherwise, of the Issuer since the latest balance sheet referred to in this Section 3(e).
- f) Title to Assets. The Issuer has good and marketable title in fee simple to all real property and good title to all personal property it purports to own, including (except as they have been affected by transactions in the ordinary course of business) all properties and assets reflected in the most recent balance sheet referred to in Section 3(e) hereof. In the case of property used in its trade or business but not owned by it, the Issuer has a valid, binding and enforceable right to use such property pursuant to a written lease, license or other agreement. All properties and assets of the Issuer are free and clear of all mortgages, deeds of trust, liens, pledges, charges and encumbrances (other than liens permitted by Section 5(h) hereof).
- g) Intellectual Property. Issuer owns, or has the legal right to use, all patents, trademarks, trade names, copyrights, technology, know-how and processes ("**Intellectual Property**") necessary for it to conduct its business as currently conducted except for those the failure to own or have such legal right to use could not reasonably be expected to have a material effect. As of the Closing Date, set forth in **Schedule 3(g)** is a list of all Intellectual Property registered with the United States Copyright Office or the United States Patent and Trademark Office and owned by Issuer or that Issuer has the right to use. Except as provided in **Schedule 3(g)**, no claim has been asserted and is pending which is challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does

Issuer know of any such claim, and, to the knowledge of the Issuer, the use of such Intellectual Property by the Issuer does not infringe on the rights of any person.

- h) Securities Matters. Neither the Issuer nor any Guarantor nor any agent acting on the behalf of the Issuer or any Guarantor has offered the Bond or the Guaranty, or any part thereof, or any similar obligation for sale to, or solicited any offers to buy such Bond or the Guaranty, or any part thereof, or any similar obligation from, any person or persons so as to bring the issue or sale of the Bond within the provisions of Section 5 of the Securities Act of 1933, as amended, and neither the Issuer nor any Guarantor nor any agent acting on the behalf of the Issuer or any Guarantor will sell or offer for sale the Bond or the Guaranty or any similar obligation of the Issuer or any Guarantor to, or solicit any offer to buy any similar obligation of the Issuer or any Guarantor from, any person or persons so as to bring the issue or sale of the Bond or the Guaranty within the provisions of Section 5 of the Securities Act of 1933, as amended.
- i) Licenses and Permits. The Issuer has procured and is now in possession of all licenses and permits required by federal, state or local laws for the operation of the business of the Issuer in each jurisdiction wherein the Issuer is now conducting or proposes to conduct business.
- j) No Defaults on Indebtedness. The Issuer is not in default in the payment of the principal of or interest on any indebtedness for borrowed money nor in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued, and no event has occurred under the provisions of any such instrument or agreement which with or without the passing of time or the giving of notice, or both, constitutes or would constitute an event of default thereunder.
- k) Tax Returns. The Issuer has filed all federal and state income tax returns which, to the knowledge of the officers of the Issuer, are required to be filed, and have paid all taxes shown on said returns and all assessments received by it to the extent that they have become due. The federal income tax returns of the Issuer have been finally determined by the Internal Revenue Service to be satisfactory (or have been closed by the applicable statute of limitations) for all years prior to and including the year ended prior to the Closing Date. No claims have been asserted against the Issuer in respect of federal income tax returns for any subsequent year.
- l) No Margin Stock. The Issuer owns no Margin Stock and none of the proceeds received by the Issuer from the sale of the Bond will be used for the purpose of purchasing or carrying Margin Stock or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase Margin Stock or for any other purpose not permitted by Regulation U (12 CFR 221) of the Board of Governors of the Federal Reserve System, as amended from time to time.
- m) ERISA Matters. Each Plan of the Issuer and each ERISA Affiliate in which any employees of the Issuer or any ERISA Affiliate participate that is subject to any provisions of ERISA is being administered in accordance with the documents and instruments governing such Plan, and such documents and instruments are consistent with those provisions of ERISA and the Internal Revenue Code, which have become effective and operative with respect to such Plan as of the date of this Agreement. No such Plan has incurred any material accumulated funding deficiency within the meaning of Section 302 of ERISA (whether or not waived), and neither the Issuer nor any ERISA Affiliate has incurred any material liability (including any material contingent liability) to the PBGC in connection with any such Plan. No such Plan nor any trust created thereunder nor any trustee or administrator thereof has engaged in a "prohibited transaction" within the meaning of ERISA or Section 4975 of the Internal Revenue Code and the issuance and sale of the Bond as contemplated hereby will not constitute a "prohibited

transaction". No such Plan nor any trust created thereunder has been terminated, nor have there been any "reportable events" within the meaning of Section 4043 of ERISA with respect to any such Plan. Neither the Issuer nor any ERISA Affiliate contributes to or has any employees who are covered by any "multiemployer plan," as such term is defined in Section 3(37) of ERISA, and neither the Issuer nor any ERISA Affiliate has incurred any withdrawal liability with respect to any such multiemployer plan.

- n) Brokers and Finders. Neither the Issuer, any agent acting on its behalf, nor any person controlling, controlled by or under common control with the Issuer has taken any action the effect of which would be to cause the Investor to be liable for any broker's, finder's or agent's fee or commission in connection with the placement of the Bond or any other transactions contemplated by this Agreement other than fees which Investor may have paid from Investor's funds. The Issuer has retained no one as a broker or finder in connection with the placement of the Bond or any other transactions contemplated by this Agreement
 - o) Use of Proceeds. The Issuer will use the proceeds of the Bond in accordance with the permitted uses set forth in the Bond.
 - p) Investment Company Act. The Issuer is not an "investment company" or a company "controlled" by an "investment company", as each of the quoted terms is defined or used in the Investment Company Act of 1940, as amended.
 - q) Full Disclosure. Neither this Agreement, the Financial Statements referred to in Section 3(e) hereof, nor any other document, certificate or instrument delivered to the Investor on behalf of the Issuer in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein not misleading. There is no material fact (other than general economic conditions or facts or information available to the public generally) that has not been disclosed in writing to the Investor that may or could reasonably have a Materially Adverse Effect on the business operations or financial or other condition of the Issuer or the ability of the Issuer to perform this Agreement or to pay the principal of or interest on the Bond and other sums payable under this Agreement when due.
 - r) Additional Representations and Warranties. In addition to the representations and warranties set forth in this Section 3, the Issuer represents and warrants to the Investor the following representations and warranties, if any: None
4. **Affirmative Covenants.** The Issuer covenants and agrees that, so long as any amount shall remain unpaid on the Bond, it will:
- a. Payment. Duly and punctually pay or cause to be paid the principal of and interest on the Bond and will duly and punctually perform or cause to be performed all things on its part to be done or performed under this Agreement, the Bond, and the Bond Security Documents.
 - b. Prepayment. The Issuer may prepay this Bond in whole or in part only upon notice to Investor, subject to the conditions set forth in the Bond.
 - c. Business of Books and Records.
 - i. At all times, keep or cause to be kept proper books of record and account in which full, true and correct entries will be made of their transactions in accordance with GAAP, applied on a consistent basis throughout the periods involved.
 - ii. At all reasonable times, permit the Investor and their representatives to inspect its books and records and to make extracts therefrom and to inspect its properties and operations.
 - d. Financial.

- i. From time to time, furnish the Investor with such information and statements as the Investor may reasonably request concerning performance by it of the covenants and agreements contained in this Agreement, the Bond, and the Bond Security Documents.
 - ii. From time to time and no less often than at least within 120 days after the end of each fiscal year, furnish the Investor with such information and statements (including, without limitation, balance sheets, statements of income and retained earnings, tax returns, and statements of cash flows prepared in accordance with GAAP), as the Investor may reasonably request, reflecting the financial condition of the Issuer and the results of Issuer's operations over a specified accounting period, all in reasonable detail, and setting forth comparable figures for the same accounting period in the preceding fiscal year. Statements shall be on a consolidated basis but also provide sufficient detail as to evaluate each company independently. Consolidated statement should reflect elimination of intercompany transactions.
 - iii. Issuer shall cause the Guarantors to furnish to Investor upon request of Investor, but no less frequently than annually, completed and detailed personal financial statements as well as copies of the Guarantors personal income tax returns, together with all schedules and K-1, and other financial information as reasonably requested by Investor.
 - iv. At the time of the delivery to the Investor of the information and statements referred to in **Section 4(d)(i)**, deliver to the Investor a certificate signed by a person duly authorized by the Issuer to certify that she or he has reviewed the provisions of this Agreement and stating, in her or his opinion, if such be the fact, that the Issuer has not been and is not in default as to any of the provisions contained in this Agreement, or, in the event the Issuer is or was in default, setting forth the details of such default. Such certificate shall set forth the computations upon which such person based the conclusion that the Issuer is and has been in compliance with **Sections 4 and 5** hereof.
- e. Corporate and Limited Liability Company Existence. Maintain its respective corporate and limited liability company existence in good standing and comply with all applicable laws and regulations of the United States and of each state thereof and of each political subdivision thereof and of any and all other governmental authorities.
- f. Payment of Taxes and Claims. Pay before they become delinquent
 - i. all taxes, assessments and governmental charges or levies imposed on the Issuer or upon the property of the Issuer;
 - ii. all claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like persons which, if unpaid, might result in the creation of a lien or charge upon any property of the Issuer; and
 - iii. all claims, assessments or levies required to be paid by the Issuer pursuant to any agreement, contract, law, ordinance or governmental rule or regulation governing any pension, retirement, profit-sharing or any similar plan of the Issuer, provided that the Issuer shall have the right to contest in good faith, by appropriate proceedings promptly initiated and diligently conducted which will prevent the forfeiture or sale of any property of the Issuer or any material interference with the use thereof by the Issuer, the validity, amount or imposition of any of the foregoing and upon such good faith contest to delay or refuse payment thereof, if such reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor.
- g. Maintenance of Properties. Maintain and keep its properties in good repair, working order and condition, and from time to time make all necessary and proper repairs, renewals and replacements, to include but not be limited to, any permitting or other documentation as may be required by both State and Federal law, so that the business carried on in

connection therewith may be properly and advantageously conducted at all times. From time to time but no less than annually, furnish the Investor with such information, statements, and copies of documentation as the Investor may reasonably request concerning maintenance of properties.

h. Insurance.

i. Risks to be Insured. Including without limitation insurance referred to in section 6, the Issuer will at its expense maintain with insurers satisfactory to the Investor:

1. appropriate workers' compensation insurance to the extent required by the law of the states in which the Issuer is engaged in business and to the extent necessary to protect the Issuer or the Investor against workers' compensation claims;
2. such other insurance, in such amounts and against such risks, as is commonly obtained in the case of businesses similar to that of the Issuer, or is reasonably requested by the Investor. The Issuer will comply with such other requirements as the Investor may reasonably request for the protection by insurance of its interest or as required in any Bond or Bond Security Document. Such insurance shall be written by companies of nationally recognized financial standing legally qualified to issue insurance and reasonably acceptable to the Investor.
3. insurance with respect to the Mortgaged Property against physical loss (including without limitation loss resulting from fire, lightning, wind and hail, sprinkler leakage, explosion and smoke), written on an "all risks" replacement cost basis, in amounts sufficient to prevent the Investor or the Issuer from becoming a co-insurer of any partial loss under the applicable policies;
4. public liability, including personal injury and property damage, insurance applicable to the Mortgaged Property in such amounts as are usually carried by persons operating similar properties in the same general locality but in any event with a combined single limit of not less than \$1,000,000.00 and \$ 1,000,000.00 in the aggregate; and

ii. Policy Provisions. All insurance maintained by the Issuer pursuant to this Agreement shall (i) name the Issuer and the Investor as insured, as their respective interests may appear, (ii) provide, except in the case of public liability insurance, that all insurance proceeds for losses of less than \$25,000 shall be adjusted with and payable to the Issuer and that all insurance proceeds for losses of \$25,000 or more shall be adjusted with the Issuer and the Investor jointly, but shall be payable to the Investor, (iii) include effective waivers by the insurer of all claims for insurance premiums against the Investor, (iv) provide that any losses shall be payable notwithstanding (A) any act of negligence of the Investor or the Issuer, (B) any foreclosure or other proceedings or notice of sale relating to the Mortgaged Property, or (C) any change in the title to or ownership of the Mortgaged Property, (v) provide that no cancellation thereof shall be effective until at least 30 days after receipt by the Investor of written notice thereof, and (vi) be reasonably satisfactory to the Investor in all other respects.

iii. Delivery of Insurance Certificates. The Issuer will deliver to the Investor certificates evidencing the existence of all insurance policies with respect to the Mortgaged Property which the Issuer is required to maintain or cause to be maintained pursuant to this paragraph together with evidence as to the payment of all premiums then due thereon.

i. Remuneration. Pay reasonable compensation, whether by way of salaries, bonuses, participations in pension or profit sharing plans, fees under management contracts or for professional services, to any of its officers, directors, employees, members, partners or

stockholders only in amounts which are not in excess of reasonable compensation paid for similar services by similar businesses.

j. Financial Covenants.

- i. Minimum Fixed Charge Coverage Ratio. Maintain a Minimum Fixed Charge Coverage Ratio of 1.15 to 1. This ratio shall be defined as net income before taxes plus interest expense plus depreciation plus depletion plus amortization divided by interest expenses plus current portion long term debt plus capital expenditures plus taxes plus distributions. This ratio shall be calculated on a consolidated basis.
 - ii. Liquidity Ratio. At all times maintain a ratio of Current Assets divided by Current Liabilities of not less than 1.20 to 1. This shall be calculated from the consolidated financial statements of the Issuers.
 - iii. Owner Tangible Equity. Maintain an Owner Tangible Equity of no less than 10%. Tangible Owner Equity is calculated by dividing the difference between total assets and total liabilities by the total assets less intangibles. This ratio shall be calculated from the consolidated reviewed financial statements of the Issuers.
 - iv. Additional Financial Benchmarks. Maintain such other financial benchmarks as the Investor may from time to time reasonably request.
- k. Notice of Default. Give the Investor prompt notice in writing of any condition or event which constitutes an Event of Default under Section 7 hereof, or which, after notice or lapse of time, or both, would constitute such an Event of Default.
- l. Exchange of Bond. At any time, at its expense, upon written request of the Investor and surrender of the Bond for such purpose, issue a new Bond or Bonds in exchange therefor in such denominations of at least \$250,000.00 as shall be specified by the holder of such Bond, in an aggregate principal amount equal to the then unpaid principal amount of the Bond surrendered in a form acceptable to the Investor, with appropriate insertions and variations, and bearing interest from the date to which interest has been paid on the Bond surrendered.
- m. Reference in Financials. Include, or cause to be included, a reference (by way of footnote or otherwise) to the Bond and to this Agreement in all financial statements of the Issuer for periods ending after the Closing Date which are furnished to stockholders, creditors and prospective creditors.
- n. Qualified Retirement Plans. Cause each Plan of the Issuer and any ERISA Affiliate in which any employees of the Issuer or any ERISA Affiliate participant that is subject to the provisions of ERISA or the Internal Revenue Code and the documents and instruments governing each such Plan to be conformed to when necessary, and to be administered in a manner consistent with those provisions of ERISA or the Internal Revenue Code which may, from time to time, become effective and operative with respect to such Plans; if requested by the Investor in writing from time to time, furnish to the Investor a copy of any annual report with respect to each such plan that the Issuer files with the Internal Revenue Service pursuant to ERISA. The Issuer will not, and will not permit any ERISA Affiliate to (i) engage in any "prohibited transaction," (ii) incur any "accumulated funding deficiency," whether or not waived, or (iii) terminate any Plan in a manner which could result in the imposition of a lien on any property of the Issuer or any ERISA Affiliate.
- o. Additional Covenants. In addition to the covenants set forth in this Section 5 the Issuer covenants and agrees as set forth to the additional Covenants as follows, if any:
- i. Issuer shall, on or before May 31, 2008, have completed all site improvements, relocation and set up of the existing hot plant which actions are being funded with proceeds from this \$1,000,000.00 bond. Site inspections will be conducted monthly by an employee of Investor to confirm progress of work and that project is completed by the specified date.
 - ii. Issuer shall on or before 60 days after the date of this Agreement have obtained and provide to Investor copies of all permits necessary to operate the hot plant and

Issuers business issued by the State of Idaho Department of Environmental Quality.

5. **Negative Covenants** The Issuer covenants and agrees that so long as any amount shall remain unpaid on the Bond, it will not:

a. Permitted Indebtedness. Borrow money, issue evidences of indebtedness or create, assume, guarantee, become contingently liable for or suffer to exist indebtedness in addition to the Bond (including, without limitation, Capitalized Lease Obligations as indebtedness) except:

- i. ~~Funded Debt of the Issuer incurred in connection with the acquisition of machinery and equipment used in the business of the Issuer and not held as inventory for sale or lease, which indebtedness is secured by conditional sales contracts, title retention agreements or other purchase money security interests, or constitutes a Capital Lease Obligation, provided that the indebtedness secured by any such security interest shall not exceed 80% (or 100% in the case of Capitalized Lease Obligations) of the cost of the assets acquired subject thereto and such security interest shall not encumber any property of the Issuer other than the assets acquired subject thereto, and provided further that the aggregate amount of all such indebtedness secured by such security interests at any time outstanding shall not exceed \$300,000.00 in any twelve-month period without the consent of the Investor, such consent not to be unnecessarily withheld.~~
- ii. Current Debt of the Issuer to banks, which indebtedness is secured and/or unsecured, and provided further that the aggregate amount of such indebtedness at any time outstanding shall not exceed \$500,000.00 in any twelve-month period without the consent of the Investor, such consent not to be unnecessarily withheld.
- iii. Existing Current Debt or Funded Debt of the Issuer not otherwise permitted by this Section 5(a) and set forth in **Schedule 5(a)(iii)** hereto, provided that all such Current Debt or Funded Debt shall be repaid in accordance with its terms and the schedule set forth in **Schedule 5(a)(iii)** with no extension, renewal or other modification;
- iv. Funded Debt of the Issuer which is subordinated in right of payment to the Bond pursuant to subordination provisions substantially as set forth in **Schedule 5(a)(iv)** hereto;
- v. indebtedness for loans permitted by Section 5(b) hereof; and
- vi. indebtedness or liabilities, other than for money borrowed, incurred or arising in the ordinary course of business
- vii. Guarantors shall not, individually or jointly, be permitted to invest in real estate pertaining to the business, organization or operations of the Issuer.

b. Permitted Investments. Purchase, or permit to exist investments in, stock or securities of, or make or permit to exist loans or advances to, or other investments in, or guarantee, endorse or otherwise become contingently liable for the obligations of any person, firm or corporation, except:

- i. investments in direct obligations of the United States government;
- ii. certificates of deposit issued by banks having capital and surplus aggregating not less than \$100,000,000;
- iii. if so permitted by law, savings deposits in national banks and federal savings and loan associations having capital stock and surplus aggregating not less than \$100,000,000, provided that the aggregate of all such savings deposits at any one bank or savings and loan association shall not exceed \$150,000.00 at any time; or

- iv. other loans, advances or investments not otherwise permitted by this Section 5(b) made after the Closing Date, provided that the aggregate amount of all such investments at any time outstanding shall not exceed \$50,000.00.
- c. Subordination of Claims. Subordinate or permit to be subordinated any claim against, or obligation of another person, firm or corporation held or owned by it to any other claim against, or obligation of, such other person, firm or corporation.
- d. Sale of Assets. Sell, lease or otherwise dispose of, all or any substantial part of its assets. Sales of inventory in the ordinary course of business is excepted from this paragraph.
- e. Merger and Consolidation. Merge or consolidate with any corporation or entity without the prior written consent of Investor. In the event the Investor does not consent to a merger or consolidation otherwise prohibited by this subsection (e) within 30 days after written request from the Issuer for such consent, and at the time of requesting such consent the Issuer has a bona fide agreement for merger or consolidation contingent upon obtaining such consent or prepayment of the Bond, then the Issuer may prepay the outstanding Bond in whole, simultaneously with the consummation of such transaction, upon 30 days prior written notice to the Investor. Any prepayment made hereunder shall be made together with interest accrued to the date of such prepayment, plus a prepayment premium, if any, equal to the applicable premium specified herein.
- f. Maintenance of Present Business. Substantially alter the nature of the business in which it is presently engaged, nor purchase or invest, directly or indirectly, in any substantial amount of assets or property other than assets or property useful and to be used in its business as presently conducted, or without prior written consent of Investor, make changes in the management structure or management agreement, if any.
- g. Transactions with Affiliates. Enter into any transaction including, without limitation, any purchase, acquisition, lease of property, sale, loan, advance, or similar dealing with an Affiliate without the prior written consent of the Investor.
- h. Permitted Liens. Create, assume, or suffer to exist any mortgage, pledge, encumbrance, lien, security interest or charge of any kind whether presently effective, springing, conditional or contingent (including any charge upon property purchased under conditional sales contracts, title retention agreements or other purchase money security interests or under leases which constitute Capitalized Lease Obligations) upon any of its property or assets, whether now owned or hereafter acquired, except liens securing the Bond, and:
- i. liens securing indebtedness permitted by Section 5(a)(i) and presently existing liens described in **Schedule 5(h)** securing existing indebtedness permitted by Section 5(a)(iii) hereof;
 - ii. liens for taxes not yet due or which are being contested in good faith by appropriate proceedings promptly initiated and diligently conducted in accordance with Section 4(f) hereof;
 - iii. other liens, charges, or encumbrances incidental to the conduct of its business or the ownership of its property which were not incurred in connection with borrowing of money or the obtaining of advances or credit and which do not in the aggregate materially detract from the value of its property or materially impair the use thereof in the operation of the business; and
 - iv. liens imposed by law in favor of mechanics, repairmen, carriers or warehousemen for sums not yet due or which are being contested in good faith by appropriate proceedings promptly initiated and diligently conducted, if such reserve or other appropriate provision, if any, as required by GAAP shall been made therefor.

- i. Distribution Restrictions. Declare or pay any dividends, purchase or otherwise acquire for value any of its capital stock now or hereafter outstanding, or make any distribution of assets to its stockholders, members or general partners as such, provided, however, the Issuer may: (i) declare and pay dividends and distributions payable in capital stock; (ii) purchase or otherwise acquire capital stock of the Issuer with the proceeds received from the issuance of new capital stock; (iii) pay redemptions, dividends or distributions in an amount not to exceed, in the aggregate, 50% of the Issuer's immediately preceding fiscal year's Net Income; (iv) pay dividends or distributions which are immediately reinvested in the Issuer; (v) so long as the Issuer first provides such supporting documentation as the Investor may request with respect to any fiscal year of the Issuer, the Issuer may pay aggregate cash dividends/distributions, during such fiscal year in an amount not to exceed the amount necessary for the stockholders of the Issuer to pay their federal and state income taxes on such stockholder's allocable share of the taxable income of the Issuer for such taxable year or fiscal year, as applicable ("**Tax Distributions**"); and (vi) pay additional distributions in an amount reasonably acceptable to Investor, provided however, that immediately prior to the proposed payment of any dividends or distributions permitted by this subsection 5(i), or after giving effect thereto, no Default or Event of Default shall exist.
- j. Capital Expenditures. Make or permit to be made Capital Expenditures in excess of \$300,000.00 in the aggregate in any twelve-month period without the consent of the Investor, such consent not to be unnecessarily withheld.
- k. Sale of Accounts. Sell with recourse, discount or otherwise sell any notes, loan receivable, bond receivable or accounts receivable.
- l. Sale and Lease-Back. Enter into any arrangement with any bank, insurance company or other lender or investor or to which such lender or investor is a party providing for the leasing by the Issuer of real or personal property which has been or is to be sold or transferred by the Issuer to such lender or investor or to any person to whom funds have been or are to be advanced by such lender or investor on the security of such property or rental obligations of the Issuer.
- m. Change in Management or Control. Make any change: (i) of Chief Executive Officer or Chief Financial Officer of the Issuer, without written notice to the Investor or within thirty (30) days after any such change; (ii) in control of the Issuer; or (iii) in ownership of the Issuer other than transfers of not more than 20% of the issued and outstanding capital stock in the Issuer to existing shareholders or employees of the Issuer.
- n. Additional Covenants. In addition to the covenants set forth in this Section 5 the Issuer covenants and agrees as set forth to the additional Covenants as follows, if any:
 - i. Sale of Real Estate. Issuer shall not sell, lease or otherwise dispose of, any real estate, including, but not limited to, real estate located in the Southwest Quarter of the Southeast Quarter of Section 22, Township 10 South, Range 17 East of the Boise Meridian, Twin Falls County, Idaho, with a street address of Route 2, 837 Madrona Street, Twin Falls, ID 83301, without the prior written consent of Investor.
 - ii. Bond to Mortgaged Property Ratio. Issuer shall not permit the Bond to value of the Mortgaged Property ratio to exceed 80% at any time. This ratio is to be calculated using all bonds issued by Issuer and Purchased by Investor. If the Bond to value of the Mortgaged Property Ratio exceeds 80%, Issuer must pay the Bond balance down in a sufficient amount to maintain a Bond to Mortgaged Property Ratio of less than 80%. If a pay down is required on the Bond, this pay down will be coordinated with the Issuer's annual prepayment date. However, collateral valuation shall be calculated annually on the anniversary date of that certain Bond dated December 26, 2007 issued by Issuer and

purchased by Investor. If additional principal reductions are necessary to maintain the 80% overall Bond to Mortgaged Property Ratio, issuers shall be required to make such principal reductions.

- iii. Gravel Extraction Limitation. Issuer shall not permit the amount of gravel extracted annually from the Crystal Springs, Old Hansen, New Hansen and Rock Creek Gravel Pits to exceed an aggregated total of 600,000 tons. If more than the permitted 600,000 tons is extracted from these four gravel pits in one year, Issuers shall pay Investor \$0.50/ton for each ton extracted over this limit. Issuers shall be required to submit gravel extraction/depletion reports semi-annually. The measurement for the annual restriction on extraction will be measured as of December 31 each year during the term of the Bond.

6. **Conditions Precedent.** The obligations of the Investor to purchase the Bond, as provided in Section 2(a) hereof, shall be subject to the satisfaction, on or before the Closing Date, of the following conditions.

- a. The representations and warranties contained in Section 3 hereof shall be true and correct as of the Closing Date; the Issuer shall not be in default with respect to any of the provisions hereof, and there shall exist no event which, with the passage of time or the giving of notice, or both, would constitute such a default; and the Issuer shall have delivered to the Investor a certificate signed by a responsible officer of the Issuer to such effects.
- b. The Issuer shall have provided to the Investor a commitment by an insurer satisfactory to the Investor to issue a mortgagee's policy of title insurance on a form acceptable to the Investor and in an amount not less than the aggregate principal amount of the Bond covering each parcel of Mortgaged Property, provided that such commitment or the latest endorsement thereof shall show the status of title to the Mortgaged Property as of the Closing Date, and provided further that in no event shall such commitment for title insurance
 - i. reflect any easements, restrictions, claims, encumbrances or title defects other than encumbrances permitted by Section 5(h) and such other matters as are acceptable to the Investor, or
 - ii. except from coverage of the policy any
 - 1. lien, or right to a lien for services, labor or material furnished on or to the Mortgaged Property (regardless of whether such lien has been recorded prior to the date of issuance of the title insurance policy),
 - 2. easements, restrictions or other encumbrances which a survey would show or
 - 3. rights of parties in possession.
- c. The Issuer shall have provided to the Investor a survey of the Mortgaged Property, including real estate owned in fee and all appurtenant easements, certified to the Investor within (30) days prior to the Closing Date by a surveyor or land engineer licensed in the state in which the Mortgaged Property is located, showing the location of all points and lines referred to in the legal description, the location of any existing improvements in compliance with all set back requirements, and the location of all utilities and easements, which survey shall reflect no easements, restrictions, claims, encumbrances or title defects other than encumbrances permitted by Section 5(h) and such other matters as are acceptable to the Investor.
- d. The Investor shall have received a Uniform Commercial Code Search against the Issuer from every state the Investor may request, as of a date no more than fifteen days prior to the Closing Date, certified by a reporting service satisfactory to the Investor, and disclosing no security interests other than those permitted under Section 5(h) of this Agreement, and a bankruptcy search and judgment search against the

Issuer from every state the Investor may request, as of a date no more than fifteen days prior to the Closing Date, certified by a reporting service satisfactory to the Investor, and disclosing no bankruptcy filings, voluntary or involuntary, or judgments filed against Issuer.

- e. The Issuer has not suffered a change having a Material Adverse Effect in financial condition, nor shall there exist (except for the matters set forth on **Schedule 5(h)** hereto) any material action, suit or proceeding pending, or to the knowledge of the Issuer threatened, against the Issuer which, if decided adversely to the Issuer, would have a Material Adverse Effect upon the Issuer or upon any of its businesses or properties, nor shall there have occurred any development in the matters set forth on **Schedule 3(d)** hereto which cause the Investor, after consultation with counsel, to determine, in their sole discretion reasonably exercised, that there exists a reasonable likelihood that any of such matters will be decided adversely to the Issuer or otherwise have a Material Adverse Effect upon the Issuer or upon any of its businesses or properties.
- f. Any other conditions set forth in any separate writing between the Issuer and the Investor with respect to the purchase of the Bond shall have been satisfied.
- g. All proceedings to be taken in connection with the transaction contemplated by this Agreement and all documents incident thereto shall be satisfactory in form and substance to the Investor and their counsel and the Investor shall have received copies of all documents which the Investor may reasonably request.
- h. The Investor shall have received the following, in form and substance satisfactory to the Investor:
 - (a) this Agreement duly executed by the Issuer;
 - (b) the Bonds duly executed by the Issuer;
 - (c) the Mortgage, fully executed and notarized, granting a first priority lien on the Mortgaged Property and any improvements thereon;
 - (d) the Security Agreement duly executed by the Issuer;
 - (e) the Guaranty duly executed by the Guarantors;
 - (f) a completed flood search and certification on the Mortgaged Property indicating the Mortgaged Property is not located in a flood plain.
 - (g) Issuer has submitted all entity documents of Issuer and all amendments thereto to Investor as reasonably required by Investor;
 - (h) proof satisfactory to Investor that all required insurance has been obtained and all insurance requirements have been met by Issuer;
 - (i) Issuer has provided Investor with complete and correct copies of any and all leases and related amendments to said leases relating to leases of facilities on the Mortgaged Property;
 - (j) Issuer shall have provided to the Investor subordinations of all intercompany transaction between Issuers on forms satisfactory to the Investor;

(k) The United States Department of Agriculture, ("USDA"), shall have committed to provide at least a 80% guaranty of the Bond under the USDA guaranty programs;

- i. In addition to the conditions precedent set forth in this Section 6, the Investor's obligations to purchase the Bond are subject to the additional Conditions Precedent as follows, if any: None.

7. Default. Each of the following events shall be an "Event of Default":

- a. the Issuer shall fail to pay any installment of principal or interest, fees, expenses, ~~charges or other amounts payable hereunder or under the Bond or any Bond Security Document~~ or to make any deposit of funds required under this Agreement when due; or
- b. any representation or warranty made by the Issuer, or any of its officers or ~~directors/members under or in connection with this Agreement, the Bond or any Bond Security Document~~ shall prove to have been incorrect in any material respect when made; or
- c. the Issuer or any Guarantor defaults in any payment on any other obligation for borrowed money beyond any period of grace provided with respect thereto or in the performance of any other agreement, term or condition contained in any agreement under which any such obligation is created if the effect of such default is to cause, or permit the holder or holder of such obligation (or a trustee on behalf of such holder or holder) to cause, such obligation to become due prior to its stated maturity; or
- d. an order for relief shall be entered in any Federal Bankruptcy proceeding in which the Issuer or any Guarantor is the debtor; or bankruptcy, receivership, insolvency, reorganization, relief, dissolution, liquidation or other similar proceedings shall be instituted by or against the Issuer or any Guarantor or all or any part of the property of the Issuer or any Guarantor under the Federal Bankruptcy Code or any other law of the United States or any bankruptcy or insolvency law of any state of competent jurisdiction; or
- e. the Issuer or any Guarantor shall have become insolvent or unable to pay its debts as they mature, cease doing business as a going concern, make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, or if a trustee, receiver or liquidator shall be appointed for the Issuer or for any substantial portion of the assets of the Issuer or any Guarantor; or
- f. default shall be made in the performance or observance of any covenant contained in Sections 4 or 5 of this Agreement; or
- g. default shall be made in the performance or observance of any of the other terms, covenants or conditions of this Agreement and such default shall continue for a period of 30 days after written notice thereof shall have been given by the Investor to the Issuer; or
- h. final judgments or orders for the payment of money shall be rendered against the Issuer or any Guarantor and such judgments or orders shall remain unsatisfied, unstayed and unbonded after the date such judgments or orders are required to be paid; or
- i. there shall occur any Event of Default under any Bond Security Document; or
- j. any statement or report furnished by the Issuer to the Investor under or in connection with this Agreement, the Bond or any Bond Security Document is false in any material respect; or
- k. the Investor, in good faith, deems itself insecure or determines that the prospect of payment of the Bond or the prospect of performance of this Agreement or any other instrument securing the Bond or relating to it is impaired.

8. **Remedies.** Upon the occurrence of an Event of Default, the Investor may, at its option, by notice to the Issuer, declare the Bond and any other obligation of Issuer owed to Investor to be forthwith due and payable and thereupon the Bond and any other obligations of Issuer owed to Investor shall be and become due and payable, together with interest accrued thereon and the premium, if any, specified in the Bond (whether or not prepayment would then be permitted by the Bond); provided, however, that if an Event of Default results from the filing of a voluntary or involuntary petition in any bankruptcy proceeding in which the Issuer is the debtor, the Bond and any other obligations of Issuer owed to Investor thereupon shall immediately become due and payable, with interest accrued thereon and the premium, if any, specified in the Bond or other such obligations (whether or not prepayment would then be permitted by the Bond, without any notice from the Investor or otherwise), or Investor may pursue all rights and remedies available under each or any of the Bond Security Documents, as well as any rights and remedies at law, or in equity, which it deems advisable for the protection of its interests to collect and enforce payment, and such rights and remedies shall be cumulative. The Issuer shall pay all expenses, court costs and reasonable attorneys' fees incurred in connection with or arising out of any default hereunder.
9. **Proceeds.** The proceeds from any disposition of the Collateral pursuant to Section 9 hereof shall be used to satisfy the following items:
- a. The expenses of taking, removing, storing, repairing, holding, maintaining and selling the Collateral and otherwise enforcing the rights of Investor under this Bond Purchase Agreement or the other Bond Security Documents, including any legal costs and reasonable attorney's fees and including but not limited to all such costs incurred by Investor.
 - b. The expense of liquidating or satisfying any liens, security interests, or encumbrances on the Collateral which may be prior to the security interest of Investor that Investor elects to satisfy.
 - c. Any unpaid fees, accrued interest and other sums due Investor under this Bond Purchase Agreement or under any of the Bond Security Documents, and then the unpaid principal amount of the Bonds.
 - d. Any other obligations.
10. **Payments on and Registration and Transfer of Bond.** The Issuer agrees that it will make payment of the principal of, premium, if any and interest on the Bond by wire transfer of immediately available federal funds with sufficient information to identify the source and application of funds to the Investor in accordance with the wire transfer instructions provided the Issuer by the Investor, or to such other accounts or in such other manner as may from time to time be designated by the Investor, without presentment of the Bond and without the rendering of any bills therefor. The Issuer shall keep at its principal office a register in which the Issuer shall provide for the registration of the Bond and of transfers of the Bond (the "**Bond Register**"), it being understood that a pledge of the Bond for purposes of securing an obligation of the holder of the Bond shall not constitute such a transfer unless the Bond subject thereto is actually conveyed to another party in connection with the foreclosure of or other realization of rights under such pledge. Upon transfer of the Bond, the holder and the transferee shall jointly notify the Issuer in writing of such transfer, whereupon the Issuer will register such transfer in the Bond Register. The Issuer may treat the person in whose name the Bond is registered on the Bond Register as the owner of the Bond for the purpose of receiving payment of principal of and interest on the Bond and for all other purposes.

11. **Notices.** Any notice or other communication required by this Agreement must be in writing and will be deemed given or delivered when delivered by hand or when deposited in the United States mail, certified or registered, return receipt requested, postage prepaid and properly addressed. The proper address of the Issuer shall be the last address of the principal office of the Issuer in Investor's records. The proper address of the Investor is indicated on the first page of this Agreement. The address of a party to whom notices or other communications is to be mailed may be changed from time to time by giving written notice to all other parties to this Agreement.
12. **Modification.** No modification, amendment, consent, or waiver of any provision of this Agreement, the Bond, or any Bond Security Document, or any related document shall be effective unless in writing and signed by the party against whom enforcement is sought, and then shall be effective only as to the specific instance and for the specific purpose for which given.
13. **Waiver.** The Issuer and other parties to this transaction (except the Investor), and each of them, whether principal, surety, guarantor, endorser, or other party, agree to be jointly and severally bound and, further, waive demand, protest, and notice of demand, protest, or nonpayment, and agree that the liability of each shall be unconditional without regard to the liability of any other party and shall not be affected by any indulgence, extension or extensions of time, renewal, waiver, release of any party or of any Collateral, or other modifications granted or consented to by the Investor. The rights and powers granted to the Investor hereunder shall not, nor shall any provision hereof, be waived except in writing signed by the Investor, and the provisions hereof shall not be modified, limited, or waived by any prior or subsequent course of dealing between the parties or between the Issuer and third parties or by any usage of trade. To the extent the Investor's funding source gives or has given value to the Investor in reliance hereon the Issuer hereby waives any and all other defenses or right of offset which the Issuer may or might have against the Investor when the Bond is held by the Investor's funding source, its collateral custodian, or the successors or assigns of either.
14. **Expenses.** The Issuer agrees, whether or not the purchase of the Bond herein contemplated shall be consummated, to pay and save the Investor harmless against liability for the payment of all out-of-pocket expenses arising in connection with this transaction including any documentary stamp taxes (and including interest and penalties, if any), which may be determined to be due and payable with respect to the execution and delivery of the Bond, and the reasonable fees and expenses of counsel to the Investor. The Issuer also agrees to pay, and to save the Investor harmless against liability for the payment of, the reasonable fees and expenses of counsel to the Investor in connection with any documentation and related services arising after the Closing Date in connection with the preparation of waivers or amendments of any provisions of this Agreement, the Bond, or Bond Security Documents. In addition, the Issuer agrees to pay, and to save the Investor harmless against, all brokerage or finders fees incurred in the transaction contemplated by this Agreement.
15. **Investment Purpose.** The Investor represents that the acquisition of the Bond by it will be for investment and not with a view to resale in connection with any distribution thereof, it being understood, however, that the disposition of the property of the Investor shall at all times be within its control.
16. **Successors and Assigns.** All covenants and agreements in this Agreement and the Bond contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not; however, Issuer may not assign its interests in this Agreement, the Bond or the Bond Security Documents to any other party without Investor's prior written consent.

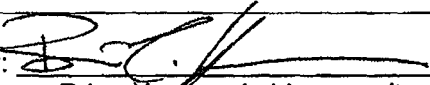
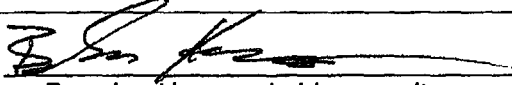
17. **Survival of Representations and Warranties.** All representations and warranties contained herein or made in writing by the Issuer in connection herewith shall survive the execution and delivery of this Agreement and of the Bond.
18. **Severability of Provisions.** Any provision of this Agreement, the Bond, or the Bond Security Documents which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.
19. **Governing Law.** This Agreement and the Bond shall be governed by, construed and enforced in accordance with the internal laws of the State of Idaho without regard to its conflicts of laws principles.
20. **Consent to Jurisdiction.** The Issuer hereby irrevocably submits to the jurisdiction of any Idaho state court or federal court over any action or proceeding arising out of or relating to this Agreement, the Bond and any instrument, agreement or document related hereto or thereto, and the Issuer hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in a Idaho state court or federal court. The Issuer hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of an action or proceeding. The Issuer irrevocably consents to the service of copies of the summons and complaint and any other process which may be served in any such action or proceeding by the mailing of copies of such process to Issuer at the last address for Issuer in Investor's records. The Issuer agrees that a final judgment in any action or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
21. **WAIVER OF JURY TRIAL.** THE ISSUER AND THE INVESTOR HEREBY IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE BOND OR ANY BOND SECURITY DOCUMENT TO WHICH IT IS A PARTY OR ANY INSTRUMENT OR DOCUMENT DELIVERED THEREUNDER.
22. **Power of Attorney.** Issuer hereby irrevocably appoints the Investor as Issuer's attorney-in-fact to act for the Issuer with full authority in the place and name of the Issuer to take any action and to execute any instrument which the Investor may deem advisable to accomplish the purposes of this Agreement, the Bond Security Documents and the Bond, including, without limitation, the authority (a) to endorse, collect, sue for, compromise, and receive any drafts, instruments, documents, or moneys due in connection with the Collateral; (b) to file any claims or take any action or institute any proceedings which the Investor may deem desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Investor with respect to any of the Collateral; (c) to disburse funds including paying insurance premiums, taxes, liens, and other costs of preserving the Collateral; and (d) to establish, determine priority of, perfect, continue as perfected, preserve, enforce, or terminate the Investor's rights and interests under this Agreement, the Bond Security Documents or the Bond. The Investor may charge its expenses of doing so to the Bond and the Issuer shall pay them upon demand with interest from the date each expense is incurred at the rate in effect on the date each expense is incurred.
23. **Captions.** The captions in this Agreement are for convenience only and shall not be considered in the interpretation of any of the provisions hereof.

24. **Counterparts.** This Agreement may be executed in any number of counterparts or facsimile counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute but one and the same agreement.

25. **Entire Agreement.** This Agreement together with the Bond, the Bond Security Documents and the other documents referred to herein or therein embody the final, entire agreement by and among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no unwritten oral agreements among the parties thereto.

ISSUER:

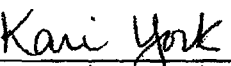
Gordon Paving Company, Inc., an Idaho Corporation
Northwest Sand & Gravel, Inc., an Idaho Corporation
Blackrock Land Holdings, LLC, an Idaho Limited Liability Company

By:  Name: Brian Hansen, in his capacity as Secretary of Gordon Paving Company, Inc., Secretary of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, LLC	By:  Name: Brandon Hansen, in his capacity as Vice President of Gordon Paving Company, Inc., Vice President of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, LLC
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

The foregoing Agreement is accepted as of the date first above written.

INVESTOR:

Agri-Access®

By: 
Name: Kari York
Title: Sr. Loan Administrator

**Schedule 1.0
Equipment**

2007 Komatsu WA500-6 Wheel Loader S # A92288;
200 CWS WA 500-6 Bucket, Pin on S #702705;
2007 Komatsu D155AX-6 Crawler Dozer S # 80188; and
41556 Secondary Closed Circuit Plant S #4156-538

**Schedule 2(c)
Guarantors**

1. Craig Hansen GPC Nevada Trust
 2. Carol Hansen GPC Nevada Trust
 3. Brandon Hansen, individually
 4. Brian Hansen, individually
-

Schedule 3(d)
Legal Proceedings
None.

**Schedule 3(e)
Financial Statements**

Gordon Paving Company, Inc.

2008 & 2009 Projections

December 31, 2007 Company Prepared Financial Statement

December 31, 2007 Accounts Receivable Aging Report

June 30, 2007 and 2006 Accountant Reviewed Interim Statement

2006 Federal Tax Return

December 31, 2006 and December 31, 2005 Accountant Reviewed Years Ended Statement

2005 Federal Tax Return

2004 Federal Tax Return

Northwest Sand & Gravel, Inc.

2008 & 2009 Projections

December 31, 2007 Company Prepared Financial Statement

December 31, 2007 Accounts Receivable Aging Report

June 30, 2007 and 2006 Accountant Reviewed Interim Statement

2006 Federal Tax Return

December 31, 2006 and 7-month ended December 31, 2005 Accountant Reviewed Years Ended Statement

2005 Federal Tax Return (for 7 months as company began 6/1/2005)

Blackrock Land Holdings, LLC

2008 & 2009 Projections

December 31, 2007 Company Prepared Financial Statement

June 30, 2007 statement of Assets & Liabilities

2006 Federal Tax Return

December 31, 2006 Statement of Assets, Liabilities and Equity – Estimated Current Values – Accountant Compiled Statement

Gordon Paving Company, Inc. / Northwest Sand & Gravel, Inc. / Blackrock Land Holdings, LLC

2008 & 2009 Projections

December 31, 2007 Company Prepared Consolidated Balance Sheet for 3 Related Entities

December 31, 2007 Company Prepared Consolidated Income Statement for 3 Related Entities

October 31, 2007 Company Prepared Consolidated Balance Sheet for 3 Related Entities

October 31, 2007 Company Prepared Consolidated Income Statement for 3 Related Entities

Brian & Holly Hansen

Personal Financial Statement, Accountant Compilation, dated October 31, 2007

Personal Financial Statement, Accountant Compilation, dated June 30, 2007

2006 Federal Tax Return

2005 Federal Tax Return

2004 Federal Tax Return

2003 Federal Tax Return

**Schedule 3(e)
Financial Statements (continued)**

Brandon & Nicole Hansen

Personal Financial Statement, Accountant Compilation, dated October 31, 2007

Personal Financial Statement, Accountant Compilation, dated June 30, 2007

2006 Federal Tax Return

2005 Federal Tax Return

2004 Federal Tax Return

2003 Federal Tax Return

**Schedule 3(g)
Intellectual Property**

None.

Schedule 5(a)(iii)
Permitted Indebtedness and Repayment Terms and Schedule

Note Payable	Balance as of 12/31/07	Monthly Payment	Interest Rate
DC Truck Finance	\$25,864.77	\$763	4.90%
DC Truck Finance	\$34,713.17	\$936	2.95%
Ford Credit	\$35,668.50	\$760	7.02%
Kubota Credit	\$14,613.05	\$471	0.00%
Komatsu	\$75,498.12	\$2,546	0.90%
Wells 2132 – 35	\$247,114.77	\$6,060	7.82%
Wells 2137 -38	\$134,908.39	\$3,250	7.65%
Wells 2136	\$67,530.15	\$1,635	7.82%
GMAC – Brad	\$3,096.67	\$774	0.00%
GMAC – Craig	\$2,055.17	\$685	0.00%
Agri-Access	\$9,000,000.00	\$58,999.95	6.50%

Schedule 5(a)(iv)
Subordination Provisions for Funded Debt of the Issuer

Issuer shall subordinate all intercompany transactions between Issuers to the Bond on forms satisfactory to the Investor;

**Schedule 5(h)
Permitted Liens**

UCC	Secured Party
B200710283640	Komatsu Financial Limited Partnership
B200409613047	CitiCapital Commercial Corporation
B200509868615	Harry Clifford Dehaan
B200509873750	Citi Group/Equipment Financing, Inc
B200509876779	Wells Fargo Equipment Finance, Inc
B200509881672	OK Auto Systems, Inc
B200509883176	Caterpillar Financial Services Corporation
B200509913311	Wells Fargo Equipment Finance, Inc.
B200509914005	Wells Fargo Equipment Finance, Inc.
B200610040116	General Electric Capital Corporation
B200610064492	General Electric Capital Corp.
B200710256536	Wells Fargo Equipment Finance, Inc.
B200710297073	Kubota Credit Corporation, USA
B200610009946	Banc of America Leasing & Capital, LLC
B200610022832	Banc of America Leasing & Capital, LLC
B200610103154	Banc of America Leasing & Capital, LLC
B200610126102	Banc of America Leasing & Capital, LLC
B200710388828	Agri-Access, a Division of AgStar Financial Services, ACA
B200810395254	Agri-Access, a Division of AgStar Financial Services, ACA
B200810406770	Wells Fargo Equipment Finance, Inc.
B200810406850	Wells Fargo Equipment Finance, Inc.
B200610155345	The Cit Group/Equipment Financing, Inc

Schedule 5(j)
Transactions to be completed

Issuer shall provide completed Department of Environmental Quality permit within 60 days of closing date.

**FIRST AMENDMENT TO
BOND PURCHASE AGREEMENT**

This First Amendment to Bond Purchase Agreement, ("First Amendment"), is entered in to this 22 day of September, 2010 by and between, Gordon Paving Co., Inc., an Idaho corporation, Northwest Sand & Gravel, Inc., an Idaho Corporation, and Blackrock Land Holdings, LLC, an Idaho Limited Liability Company, collectively as the **Issuer**, and Agri-Access®, a division of and trademark of AgStar Financial Services, ACA, a federally chartered corporation, as the **Investor**.

WHEREAS, on April 30, 2008 the **Issuer**, entered in to a Bond Purchase Agreement with the **Investor**; and

WHEREAS, Issuer and Investor wish to amend Section 5. g. of the Bond Purchase Agreement dealing with Transactions with Affiliates; and

WHEREAS, the Issuer and Investor now desire to amend the Bond Purchase Agreement to carry out the above stated wishes;

NOW THEREFORE, the Issuer and Investor hereby agree to amend the Bond Purchase Agreement as follows:

1. Section 5. g. of the Bond Purchase Agreement is hereby amended and restated in its entirety to read as follows:


"g. Transactions with Affiliates. Enter into any transaction including, without limitation, any purchase, acquisition, lease of property, sale, loan, advance, or similar dealing with an Affiliate, except as may be carried out in the normal course of Issuer's business and as may be properly reflected on Issuer's income statement, without the prior written consent of Investor."


All other terms and conditions of the Bond Purchase Agreement shall remain in full force and effect without change except as previously amended and as set forth in this First Amendment.

This First Amendment is entered in to and effective the on the date stated above.

ISSUER:

**Gordon Paving Company, Inc., an Idaho Corporation
Northwest Sand & Gravel, Inc., an Idaho Corporation
Blackrock Land Holdings, L.L.C., an Idaho Limited Liability Company**

By: 
Name: Brian Hansen, in his capacity as
Secretary of Gordon Paving Company,
Inc., Secretary of Northwest Sand &
Gravel, Inc., Member of Blackrock Land
Holdings, LLC

By: 
Name: Brandon Hansen, in his capacity as
Vice President of Gordon Paving Company,
Inc., Vice President of Northwest Sand &
Gravel, Inc., Member of Blackrock Land
Holdings, LLC

INVESTOR:

Agri-Access®



By: Scott Jarch
Title: Agr Agri-Access

EXHIBIT G

Assn.	Branch #	CIF #	Bond Acct	Product Code
52	483	5603978	7616456500	3474

Gordon Paving Company, Inc.,
Northwest Sand & Gravel, Inc.,
and
Blackrock Land Holdings, L.L.C
Bond

PRINCIPAL AMOUNT: \$1,000,000.00

DATE OF ISSUE: 4/30/2008

MATURITY DATE: 5/1/2023

INVESTOR: Agri-Access®*

FOR VALUE RECEIVED, Gordon Paving Company, Inc., an Idaho Corporation, Northwest Sand & Gravel, Inc., an Idaho Corporation and Blackrock Land Holdings, L.L.C., an Idaho Limited Liability Company (the "**Issuer**") promises to pay to Agri-Access®,* a federally chartered corporation with principal offices at PO Box 7438, 3555 9th Street, Ste 400, Rochester MN, 55901 or to its registered holder (collectively, "**Investor**"), on or before the Maturity Date, **5/1/2023**, the principal sum of \$1,000,000.00 together with interest thereon from the date of disbursement, **04/30/2008**, (the "**Disbursement Date**"), pursuant to the terms and conditions of this Bond (this "**Bond**") and that certain Bond Purchase Agreement, of even date herewith, by and between Issuer and Investor (the "**Bond Purchase Agreement**"). All capitalized terms used in this Bond, but not otherwise defined herein, have the meaning ascribed to them in the Bond Purchase Agreement.

1. INTEREST: The annual rate of interest of the Bond is equal to 5.60% percent ("interest rate"). Interest hereunder shall be computed on the basis of a year of 360 or 365 days as Investor may determine, but charged for actual days principal is outstanding.

After the initial 7 years of the bond, the interest rate stated in this bond is subject to adjustment by the Investor or any subsequent holder of this Bond on each Rate Change Date. Effective on the 7-year anniversary date of the bond and each 7-years thereafter (each a "Rate Change Date"), the Variable Interest Rate shall change to a rate that shall be determined by adding a margin of 2.60% over the weekly average of the Federal Farm Credit Banks (FFCB) Funding Cost Index. The most current prior weekly average prior to the reprice date will be used. If the Index is no longer available, Lender will select a new index, which is based upon comparable information. Rates will be rounded the total to the nearest one-eighth of one percent.

Notwithstanding anything to the contrary in this Bond, Bond Purchase Agreement or any of the Bond Security Documents, Issuer shall not be required to pay unearned interest on this Bond, or ever be required to pay interest on this Bond at a rate in excess of the Maximum Rate, if any. If the effective rate of interest which would otherwise be payable under this Bond, Bond Purchase Agreement or any of the Bond Security Documents would exceed the Maximum Rate, if any, then the rate of interest which would otherwise be contracted for, charged, or received under

* Agri-Access® is a division and trademark of AgStar Financial Services, ACA. All references to Investor herein shall refer to AgStar Financial Services, ACA.

this Bond, Bond Purchase Agreement or any of the Bond Security Documents shall be reduced to the Maximum Rate, if any. For purposes of this Bond, "Maximum Rate" means the maximum nonusurious interest rate, if any, at any time, or from time to time, that may be contracted for, taken, reserved, charged or received under applicable state or federal laws.

2. DEFAULT INTEREST: Upon the occurrence of an Event of Default, any payment of principal or, to the extent permitted by applicable law, interest on this Bond not paid when due, whether by regular installment, upon prepayment, by acceleration, at maturity or otherwise, shall thereafter bear interest at a rate per annum equal to 5% in excess of the rate then applicable to this Bond, provided that in no event shall such rate exceed the Maximum Rate.

3. PAYMENT OF BOND: Beginning June 1, 2008 and the first day of each month thereafter both principal and interest are due and payable in 180 amortized monthly installments, and a final installment is due and payable on the Maturity Date. The initial monthly installments of principal and interest will be in the amount of \$8,224.00 and continue until such time as the interest rate is adjusted pursuant to the terms of this Bond.

4. USE OF PROCEEDS. *The Issuer shall use the proceeds of the Bond to relocate and setup existing hot plant and Rural Funding, LLC, pay costs and fees associated with this Bond, as well as fund the shop addition. The Issuer agrees that the proceeds of the Bond are to be used only for the purposes set forth in this Section 4.*

5. COLLATERAL: Payment of this Bond and the performance of all obligations of the Issuer under the Bond Purchase Agreement is secured by the Collateral described in the Bond Security Documents.

6. PREPAYMENT: The Issuer may prepay this Bond in whole or in part only in the amounts, upon the notice and subject to the conditions set forth herein and in the Bond Purchase Agreement. In the event the Issuer gives notice of any prepayment, such notice must specify the principal amount of this Bond to be prepaid, and the date of proposed prepayment; upon which such principal amount, together with accrued and unpaid interest thereon to the prepayment date and together with the applicable premium, if any, shall become due and payable on the prepayment date. Issuer may make advance payments in any amount and at any time. Notwithstanding any language in the Bond or any other document (collectively, "Bond") to the contrary, Issuer shall have no right to make advance payments of principal (hereinafter "prepayment") except for an optional prepayment of principal allowable annually only during the month of December ("Optional Prepayment Month") in an amount equal to or less than 10% of the then outstanding principal balance. Prepayments other than those described above shall not be made without the Investor's consent, which the Investor will grant solely upon the terms and subject to the conditions hereinafter provided. In order to induce the Investor to accept any prepayment, the Issuer agrees to pay the Investor a prepayment fee for each such prepayment. A prepayment fee shall be due and payable for each such other prepayment made prior to April 30, 2015, (hereinafter "Fee End Date"). The prepayment fee shall be due and payable for each such advance payment made by the Issuer, whether made voluntarily or involuntarily, including any prepayment effected by the Investor's exercise of the acceleration clause in the Bond. (a) The prepayment fee due from the Issuer for each such advance payment shall be that amount calculated as follows: (i) compare the Initial Reference Rate, as defined herein, to the Final Reference Rate, as defined herein. If the Initial Reference Rate is less than or equal to the Final Reference Rate, the prepayment fee is zero, and (ii) if the Initial Reference Rate is greater than the Final Reference Rate, the prepayment fee shall be calculated as follows: (A) Calculate an amortization schedule using the Initial Reference Rate,

the amount of the principal prepayment, the prepayment date and the Bond maturity date. If the Fee End Date is prior to the Bond maturity date, assume for purposes of the calculation that all scheduled repayments of principal due on or after the Fee End Date are paid on the Fee End Date, (B) Calculate the interest payment(s) which will accrue on the advance payment(s) of principal through the Fee End Date at the Initial Reference Rate ("Initial Interest Amount(s)"), (C) Calculate the interest payment(s) which will accrue on the advance payment(s) of principal through the Fee End Date at the Final Reference Rate ("Final Interest Amount(s)"), (D) Calculate the "Differential Interest Amount" for each interest payment scheduled through the Fee End Date by subtracting the Final Interest Amount from the Initial Interest Amount for each such payment, and (E) the discounted present value of each Differential Interest Amount shall be calculated by using the Final Reference Rate as the discount rate. The prepayment fee shall be the sum of the discounted present value of each Differential Interest Amount. (b) The following terms shall have the meanings given below when used herein: (A) "Initial Reference Rate" means the annualized interest rate used by the Investor to obtain the Bond funds, which funds are being paid in advance of scheduled payment(s). (B) "Final Reference Rate" means the annualized interest rate Investor would allocate to fund a new bond, on the date of prepayment, with similar scheduled repayment of principal from the time of each such advance payment through the Fee End Date, assuming all scheduled repayments of principal due on or after the Fee End Date are paid on the Fee End Date. (C) Issuer shall not be charged a prepayment fee for advance payments of principal which, when considered on a cumulative basis, do not exceed ten percent of the then outstanding principal amount of the Bond and are directed by Issuer to be held for application on subsequently maturing installment payments in a funds held account which Investor, in its sole discretion, may establish and maintain.

7. MANNER OF PAYMENT: Issuer will pay the principal of and interest on this Bond by wire transfer of immediately available Federal funds to such accounts as shall be specified by the Investor, or in such other funds or in such other manner as may be mutually agreed upon by the Investor and the Issuer.

8. DISBURSEMENTS OF PRINCIPAL: Disbursement of the Principal Amount of this Bond will be made on the Disbursement Date(s) set forth in the Bond Purchase Agreement.

9. EVENTS OF DEFAULT: Events of Default under this Bond are as set forth in the Bond Purchase Agreement.

10. REMEDIES: Upon the occurrence of an Event of Default, the Investor may, at its option, exercise any or all of the rights and remedies set forth in the Bond Purchase Agreement. Investor may take any action or proceeding at law or in equity which it deems advisable for the protection of its interests to collect and enforce payment, and the Issuer shall pay all expenses, court costs and reasonable attorneys' fees incurred in connection with or arising out of any default hereunder.

11. MODIFICATION: No modification of this Bond, the Bond Purchase Agreement, the Bond Security Documents or any related document shall be enforceable unless in writing and signed by the party against whom enforcement is sought.

12. FINANCIAL INFORMATION: Investor, its agents, successors, or assigns may at any time directly or through a credit reporting agency verify or reverify any information, supplied by the Issuer to the Investor in the Issuer's bond application or otherwise provided to the Investor from any source in connection therewith. Investor, its agents, successors and assigns may report Issuer's name and information regarding this Bond and all of Issuer's past and future Bonds

to credit reporting agencies.

13. ASSIGNMENT OF BOND: The Investor may assign or otherwise transfer the Bond to any party including AgriBank, FCB and its successors, whether absolutely or as collateral security and whether in the ordinary course of business or otherwise, without Issuer's consent or approval. This Bond cannot be resold without registration under applicable Federal and State laws unless exemption from such registration requirements are then available.

14. UNAUTHORIZED DISPOSITIONS AND FALSE STATEMENTS: Issuer understands that it is a federal crime punishable by fine, imprisonment, or both to knowingly make any false statements in the Issuer's Bond application as applicable under the provisions of Title 18, United States Code, Section 1014. Issuer also understands that any unauthorized disposition of Collateral or the making of any false statement or report to the Investor in connection with a Bond could result in civil and criminal consequences to the Issuer as applicable under the provisions of Title 18, United States Code, Sections 658 and 1014.

15. PARTIES BOUND: All covenants and agreements in this Bond contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the Investor and the permitted assigns of Issuer whether so expressed or not. As provided in the Bond Purchase Agreement, this Bond is transferable only on the Bond Register of the Issuer, upon joint written notice to the Issuer of such transfer by the holder of this Bond and the transferee. The Issuer may treat the Investor or registered holder as the owner hereof for the purpose of receiving payment and for all other purposes.

16. GOVERNING LAW: This Bond and the Bond Purchase Agreement shall be governed by, construed and enforced in accordance with the internal laws of the State of Idaho without regard to its conflicts of laws principles.

IN WITNESS WHEREOF, Issuer has executed this Bond as of the Date of Issue set forth above.

ISSUER:

Gordon Paving Company, Inc., an Idaho Corporation
Northwest Sand & Gravel, Inc., an Idaho Corporation
Blackrock Land Holdings, L.L.C., an Idaho Limited Liability Company

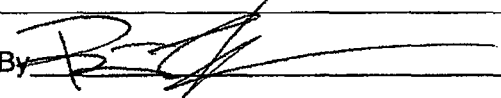
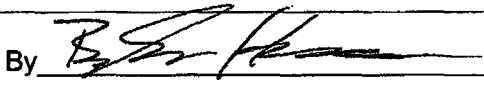
By 	By 
Name: Brian Hansen, in his capacity as Secretary of Gordon Paving Company, Inc., Secretary of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, L.L.C.	Name: Brandon Hansen, in his capacity as Vice President of Gordon Paving Company, Inc., Vice President of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, L.L.C.

EXHIBIT H

CASSIA COUNTY
RECORDED FOR:
CASSIA COUNTY ABSTRACT
4:08:08 pm 05-01-2008
2008-002730
NO. PAGES: 8 FEE: \$24.00
LARRY A. NICKELSEN
COUNTY CLERK
DEPUTY: VIKI

IDAHO OPEN-END MORTGAGE

No. 7616456500

TOTAL PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE SHALL NOT
EXCEED:\$1,000,000.00

This Mortgage, dated 4-30-08 is by **Gordon Paving Company, Inc., an Idaho corporation**, after this called "Mortgagor" whether one or more) whose mailing address is 837 Madrona Street South, Twin Falls, Idaho 83301 to **Agri-Access®,*** (after this called "Mortgagee"), a federally chartered corporation with principal offices at PO Box 7438, 3555 9th Street, Ste 400, Rochester MN, 55901.

For valuable consideration, Mortgagor grants, sells, mortgages and warrants to Mortgagee, its successors and assigns, forever, the real estate in **Cassia County**, Idaho, described in Exhibit A to this Mortgage, which is by this reference made a part of this Mortgage, together with all the tenements, hereditaments and appurtenances belonging or in any way appertaining to this real estate. All of the preceding property and property rights, including the real estate described in Exhibit A, are after this collectively called "the Mortgaged Property".

THIS MORTGAGE SECURES: (a) the repayment of indebtedness in the principal sum of \$1,000,000.00, which Mortgagee has previously or along with this Mortgage advanced or is obligated to advance, evidenced by the Bond(s) as described in a Bond Purchase Agreement dated April 30, 2008, (after this called "Bond(s)"), as follows:

Date of Bond(s)	Face Amount (\$)	Maturity Date
April 30, 2008	1,000,000.00	May 1, 2023

and any other indebtedness payable to Mortgagee evidenced by Bond(s) secured by prior liens on the real estate described in Exhibit A, together with interest as provided in the Bond(s), and all extensions, renewals, and modifications thereof; (b) the repayment fo all additional advances which Mortgagee may make from time to time to the Mortgagor or to the issure of the Bond(s) pursuant to the terms of the Bond Purchase Agreement prior to the release of this Mortgage, whether made before or after the maturity of the Bond(s) and whether evidenced by the same or other Bond(s) given after this Mortgage, with interest as provided in the Bond(s), and all extensions, renewals and modifications thereof. However, the maximum principal amount secured by this Mortgage at any one time, exclusive of interest, shall not exceed **\$1,000,000.00** in the aggregate. If the unpaid principal amount at any one time exceeds this sum, this Mortgage shall secure that portion of the unpaid principal amount that does nto exceed this sum, and interest thereon;

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(c) notwithstanding the above limitation, the repayment of all other amounts with interest to which Mortgagee may become entitled under this Mortgage; and (d) the performance and observance by Mortgagor of all the warranties, agreements and terms contained in this Mortgage and the Bond Purchase Agreement.

By execution of this Mortgage, Mortgagor hereby acknowledges receipt of all of the proceeds evidenced by the above Bond(s).

All principal, interest and other sums or charges payable to Mortgagee and secured by this Mortgage are after this called the "Indebtedness."

If the Indebtedness is paid to Mortgagee when due and Mortgagor keeps and performs all the warranties, agreements and terms contained in this Mortgage, then this Mortgage shall be void.

MORTGAGOR WARRANTS THAT: (a) Mortgagor has fee simple title to the Mortgaged Property and good right to convey it, (b) Mortgagee shall quietly enjoy and possess the Mortgaged Property, and (c) except as expressly set forth in this Mortgage, the Mortgaged Property is free from all encumbrances and Mortgagor will warrant and defend title to the Mortgaged Property against all lawful claims.

MORTGAGOR AGREES AS FOLLOWS:

1. **Discharge Liens.** To pay and discharge when due all present and future taxes, assessments, judgments, mortgages and liens on the Mortgaged Property and to perform every obligation imposed upon Mortgagor by the instruments creating these liens.

2. **Insurance.** (a) Risks to be Insured. The Mortgagor will at its expense maintain with insurers satisfactory to the Mortgagee such insurance as may be required by the Bond Purchase Agreement. (b) Damage or Destruction of the Mortgaged Property. Mortgagor shall give the Mortgagee prompt notice of any damage to or destruction of the Mortgaged Property and in case of loss covered by policies of insurance, the Mortgagee (whether before or after foreclosure sale) is hereby authorized at its option to settle and adjust any claim arising out of such policies and collect and receive the proceeds payable therefrom, provided, that the Mortgagor may itself adjust and collect for any losses arising out of a single occurrence aggregating not in excess of \$25,000.00. Any expense incurred by the Mortgagee in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Mortgagee) shall be reimbursed to the Mortgagee first out of any proceeds. The proceeds or any part thereof shall be applied to reduction of the Indebtedness then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee. (c) Delivery of Insurance Certificates. The Mortgagor will deliver to the Mortgagee certificates evidencing the existence of all insurance policies with respect to the Mortgaged Property which the Mortgagor is required to maintain or cause to be maintained pursuant to this paragraph together with evidence as to the payment of all premiums then due thereon.

3. **Condemnation.** Mortgagor shall give the Mortgagee prompt notice of any actual or threatened condemnation or eminent domain proceedings affecting the Mortgaged Property and hereby assigns, transfers, and sets over to the Mortgagee the entire proceeds of any award or claim for damages or settlement in lieu thereof for all or any part of the Mortgaged Property taken or damaged under such eminent domain or condemnation proceedings, the Mortgagee being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Mortgagor will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Mortgaged Property or agreeing to a settlement unless prior written consent of Mortgagee is obtained. Any expenses incurred by the Mortgagee in intervening in such action or collecting such proceeds, including reasonable attorney's fees, shall be reimbursed to the Mortgagee first out of the proceeds. The proceeds or any part thereof shall be applied upon or in reduction of the Indebtedness secured hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee.

4. **Disbursement of Insurance and Condemnation Proceeds.** (a) Restoration of Mortgaged Property. Any restoration or repair of the Mortgaged Property shall be done under the supervision of an architect or general contractor acceptable to Mortgagee and pursuant to plans and specifications approved by the Mortgagee. In such case where Mortgagee may elect to apply the proceeds to repair or restoration or permit the Mortgagor to so apply the proceeds, then the proceeds shall be held by Mortgagee for such purposes and will from time to time be disbursed by Mortgagee to defray the costs of such restoration or

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repair under such safeguards and controls as Mortgagee may establish to assure completion in accordance with the approved plans and specifications and free of liens or claims. Mortgagor shall on demand deposit with Mortgagee any sums necessary to make up any deficits between the actual cost of the work and the proceeds and provide such lien waivers and completion bonds as Mortgagee may reasonably require. Any surplus which may remain after payment of all costs of restoration or repair may at the option of the Mortgagee be applied on account of the Indebtedness secured hereby then most remotely to be paid, whether due or not, without application of any prepayment premium or shall be returned to Mortgagor as Mortgagor's interest may appear, the choice of application to be solely at the discretion of Mortgagee. (b) Disbursement of Proceeds. Notwithstanding the foregoing provisions regarding the disposition of insurance and condemnation proceeds, but only if Mortgagor meets the following conditions, Mortgagee will not elect to apply all of such proceeds to the Indebtedness, but shall hold such proceeds in an escrow account, from which account the proceeds may be withdrawn only by Mortgagee and shall be readvanced to Mortgagor for the purpose of reconstructing or restoring the Mortgaged Property under the following terms and conditions. Mortgagee shall make insurance proceeds available to Mortgagor ONLY IF: (i) at the time of the occurrence of the event for which proceeds are being received and at the time of the receipt of such proceeds, there is no existing uncured Event of Default hereunder; and (ii) the total proceeds to be received, together with such other sums as Mortgagor may deposit with Mortgagee, shall be sufficient, in Mortgagee's opinion, to restore the Mortgaged Property to its original condition. All such proceeds and sums shall be held by Mortgagee in an interest-bearing deposit account under the sole and exclusive control and dominion of Mortgagee, and Mortgagor shall have no right to withdraw or otherwise direct the payment of any funds from such account. If Mortgagor qualifies for the right to use such proceeds for the reconstruction and restoration of the Mortgaged Property, then Mortgagee shall advance such proceeds and sums to Mortgagor in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, without limitation, Mortgagee's right to require such items as a sworn construction statement, recordable lien waivers and appropriate title insurance endorsements. Any excess proceeds and sums and interest thereon not required to complete such restoration shall, at Mortgagee's option, be applied first to payment of the Indebtedness secured hereby in such manner as Mortgagee shall determine with any excess to be paid to Mortgagor.

5. **Protective Advances.** If Mortgagor fails to pay taxes, assessments, judgments, mortgages or other liens on the Mortgaged Property or to maintain insurance as required by this Mortgage, Mortgagee may do so.

6. **Pro Rata Payments.** Mortgagee may, at its option, require Mortgagor to pay to Mortgagee, at the same time as each regular installment of principal and interest, an amount equal to a pro rata portion of the taxes, assessments and insurance premiums next to become due, as estimated by Mortgagee.

7. **Protective Actions.** In any collection or foreclosure activities or proceedings, or if Mortgagor fails to perform any agreement or term contained in this Mortgage, or if any proceeding is commenced which affects Mortgagee's interest in the Mortgaged Property (including but not limited to eminent domain, insolvency, bankruptcy code enforcement or probate), Mortgagee may (but is not obligated to) make such appearances, disburse such sums and take such actions as Mortgagee believes are necessary to protect its interest or preserve the value of the Mortgaged Property. This includes, but is not limited to, disbursement of reasonable attorneys' fees, court costs, costs of environmental audits and compliance, costs of appraisals and title evidence, and making repairs and maintenance. Mortgagee may inspect the Mortgaged Property at reasonable times including investigating the environmental condition of the Mortgaged Property and taking soil and water samples.

8. **Additions to Indebtedness.** All amounts incurred or advanced by Mortgagee under paragraph 4 or 5 of this Mortgage shall be due immediately, shall bear interest as provided in the Bond described in this Mortgage or the Bond with the latest maturity date if more than one is described, and shall be secured by this Mortgage.

9. **Maintain Mortgaged Property.** (a) To not remove or permit to be removed any buildings, improvements or fixtures from the Mortgaged Property, (b) to maintain the Mortgaged Property in good repair and condition, (c) to cultivate the Mortgaged Property in a good, husbandlike manner, (d) to use the Mortgaged Property for farm purposes (if used for farm purposes on the date of this Mortgage), (e) to not cut or remove wood or timber from the Mortgaged Property except for domestic use, and (f) to neither commit nor permit waste of the Mortgaged Property. If the Mortgaged Property is abandoned or left

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unoccupied Mortgagee may (but is not obligated to) go upon the Mortgaged Property to protect it against waste, vandalism or other damage without liability for trespass.

10. Complete Improvements. To complete in a reasonable time any improvements now or later under construction on the Mortgaged Property.

11. Use of Bond Proceeds. The proceeds of the Indebtedness shall be used solely for (a) the purposes specified in the Bond application, Bond, Bond Purchase Agreement or, (b) other purposes Mortgagee may require or agree to in writing.

12. Assignment of Rents. To further secure the payment of the Indebtedness, Mortgagor by this Mortgage assigns to Mortgagee the rents and profits of the Mortgaged Property now due or which may later become due. Upon Default under this Mortgage by Mortgagor, Mortgagee shall immediately and without any further action to enforce its interest have an enforceable and perfected right to receive such rents and profits continuing through the entire redemption period from any foreclosure sale. Rents and profits so received shall be applied to the Indebtedness. This assignment shall be enforceable with or without appointment of a receiver.

13. Minerals and Eminent Domain. In this paragraph 13, "minerals" includes but is not limited to oil, gas, coal, lignite, rock, stone, gravel, sand, clay, peat and earth. Mortgagee shall, at its option, receive all sums which may accrue to Mortgagor from eminent domain proceedings or from the sale, lease, development or removal of minerals in and under the Mortgaged Property. These sums shall be applied to the Indebtedness as Mortgagee elects. Nothing in this Mortgage, however, obligates Mortgagee to accept these sums or constitutes consent to the sale, lease, development or removal of minerals, or obligates Mortgagee to receive any payment during foreclosure or a redemption period. If a lawful claimant enters or asserts a right of entry on the Mortgaged Property for the purpose of exploration, development or removal of minerals under reservation or conveyance paramount to this Mortgage, to the exclusion of and without compensation to Mortgagor, then, at the option of Mortgagee, the entire Indebtedness shall become due and payable.

14. Actions Not Affecting Lien or Liability. Without affecting the priority of the lien of this Mortgage or the liability of Mortgagor or of any other party for the payment of the Indebtedness, Mortgagee may from time to time without notice to Mortgagor: (a) release all or a part of the Mortgaged Property from the lien of this Mortgage, (b) extend and defer the maturity of and renew and reamortize all or any part of the Indebtedness, (c) adjust interest rates as provided in the Bond(s) and (d) release from liability for payment of the Indebtedness one or more parties who are or become liable for its payment.

15. Hazardous Substances. To comply with all federal, state and local laws and the recommendations of all courts and government agencies concerning the generation, use, discharge, release, storage and disposal of hazardous substances, petroleum products and general waste on the Mortgaged Property. Mortgagor warrants that no hazardous substances have previously been discharged, released, stored or disposed of on the Mortgaged Property and will take all remedial action necessary to remove any hazardous substance found on the Mortgaged Property during the term of this Mortgage or after default by Mortgagor. Mortgagor will indemnify Mortgagee, its directors, officers, employees and agents against all claims and losses, including court costs and attorneys' fees, arising directly or indirectly out of Mortgagor's failure to comply with this paragraph. This warranty and indemnity shall survive termination of this Mortgage.

16. Events of Default. Each of the following constitutes a default of this Mortgage by Mortgagor (Default): (a) failure to pay when due any part of the Indebtedness; (b) failure to perform or observe any warranty, agreement or term contained in this Mortgage or in any Bond(s) evidencing the Indebtedness or in any related Bond purchase agreement(s); (c) the appointment of a receiver, receiver pendente lite or liquidator, whether voluntary or involuntary, for the Mortgagor or for any of the property of the Mortgagor; (d) the filing of a petition by or against the Mortgagor under the provisions of any state insolvency law or the Bankruptcy Reform Act of 1978, as amended; (e) the making by the Mortgagor of an assignment for the benefit of creditors; (f) the sale or transfer without Mortgagee's prior written consent of all, any part of, or any interest in, the Mortgaged Property or any beneficial interest in a land trust holding title to the Mortgaged Property by Mortgagor or any party having a beneficial interest in the land trust; (g) the transfer without Mortgagee's prior written consent of stock in a corporation holding title to all or any part of the Mortgaged Property by any stockholder of such corporation, if the result is that a majority of shares of the stock is owned by any parties who are not stockholders at the date of this Mortgage.

17. Remedies on Default. Mortgagee may do any one or more of the following if a Default occurs under

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paragraph 16: (a) The entire Indebtedness may become immediately due without notice and bear interest as provided in the Bond(s) evidencing the Indebtedness and Mortgagee may collect this amount in a suit at law or by foreclosure of this Mortgage (judicially or by power of sale) or both; (b) Sell and convey the Mortgaged Property at public auction and execute to the purchaser(s), deeds of conveyance in accordance with the statutes; (c) At any sale held pursuant to this power of sale or pursuant to a court decree all of the Mortgaged Property may be sold as one parcel and any law to the contrary is waived by Mortgagor; (d) Mortgagee may retain out of the sale proceeds amounts due Mortgagee under this Mortgage, the costs of the sale, and attorneys' fees as provided by statute or in a reasonable amount; (e) In any foreclosure action or other proceeding the court may appoint a receiver and receiver pendente lite for the Mortgaged Property with the usual powers provided by statute, and Mortgagor hereby consents to the appointment; (f) If there is any security other than this Mortgage for the Indebtedness, then Mortgagee may proceed upon this and the other security either concurrently or separately in any order it chooses; (g) If this Mortgage secures multiple Bonds, Mortgagee may apply foreclosure sale proceeds to the Bonds in the order and amounts it elects.

18. Cumulative Rights. All rights and remedies of Mortgagee in this Mortgage are cumulative and are in addition to other rights and remedies given in this Mortgage or provided by law.

19. Waiver. The failure or delay of Mortgagee to exercise any right is not a waiver of that right.

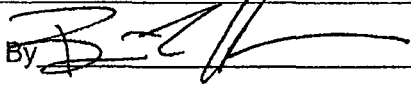
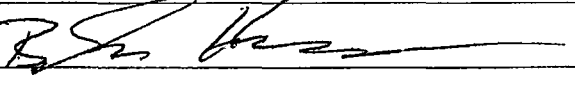
20. Successors. This Mortgage shall bind and benefit the parties to this Mortgage and their respective heirs, executors, administrators, successors and assigns.

21. Conformed Copy and Default Notice. If required by Idaho law, Mortgagee will: (a) provide Mortgagor with a conformed copy of this Mortgage and the Bond(s) it secures at the time they are executed or within a reasonable time after the recording of the Mortgage, and (b) if Mortgagee intends to foreclose this Mortgage, give Mortgagor written notice of any default under the terms or conditions of this Mortgage or the Bond(s) secured hereby. The notice will be sent by certified mail to the address of the Mortgaged Property, or such other address as Mortgagor designates in writing to Mortgagee. The notice will contain the following provisions: (a) the nature of the default; (b) the action required to cure the default; (c) a date not less than 30 days from the date the notice is mailed by which the default must be cured; (d) that failure to cure the default by the specified date will result in acceleration of the sums secured by the Mortgage and sale of the Mortgaged Property; (e) that Mortgagor has the right to reinstate the Mortgage after acceleration; and (f) that Mortgagor has the right to bring a court action to assert the nonexistence of a default or any other defense of Mortgagor to acceleration and sale.

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BLANK*****

ISSUER:

Gordon Paving Company, Inc., an Idaho Corporation

By 	By 
Name: Brian Hansen, in his capacity as Secretary of Gordon Paving Company, Inc.,	Name: Brandon Hansen, in his capacity as Vice President of Gordon Paving Company, Inc.,

ACKNOWLEDGMENTS

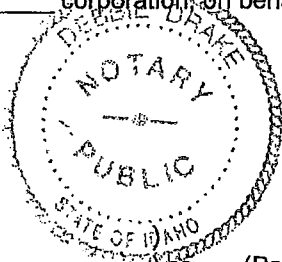
STATE OF IDAHO)
) ss. (Individual)
COUNTY OF)

On _____ before me personally appeared _____ to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that _____ executed the same as _____ free act and deed.

Name: _____
 Notary Public, State of _____
 Commissioned in _____ County
 My commission expires: _____

STATE OF IDAHO)
COUNTY OF Twin Falls) ss. (Corporation)

COUNTY OF Twin Falls) ss. (corporation)
The foregoing instrument was acknowledged before me this 30th day of April 2008 by Brian Hansee
President and Brian Hansee Secretary of Garden Paving Company a/an
Inc corporation, on behalf of the corporation.



Name: Debbie Drake
Notary Public, State of INDIANA
Commissioned in _____ County
My commission expires: 1-1-2010

Commission Expires: _____
Residing at: Twin Falls, Idaho
Commission Expires: 04-13-2012

STATE OF IDAHO)
COUNTY OF) ss. (Partnership)

The foregoing instrument was acknowledged before me this _____. By _____
Partners, on behalf of the _____ a/an _____ partnership.

Name: _____
 Notary Public, State of _____
 Commissioned in _____ County
 My commission expires: _____

This instrument was prepared under the supervision of Legal Counsel for the Mortgagee herein by:

(Name)

(Address)

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Exhibit A

TOWNSHIP 12 SOUTH, RANGE 22 EAST, BOISE MERIDIAN, CASSIA COUNTY, IDAHO

Section 21: Part of the NE¼SE¼ and all of the NW¼SE¼, and part of the NE¼SW¼, more particularly described as follows.

Beginning at the East ¼ Section corner of said Section 21, said corner marked by a 5/8" rebar with a 3" cap on top of a US GLO iron pipe with brass cap which shall be the Point of Beginning;
Thence South 00° 26'08" East along the East line of Section 21 for a distance of 30.00 feet;
Thence North 88°36'53" West (N 88°31'13" W, rec.) for a distance of 27.59 feet to a ½" rebar;
Thence North 88°36'53" West (N 88°31'13" W, rec.) for a distance of 173.81 feet to a ½" rebar;
Thence South 01°58'20" West (S 2°04'00" W, rec.) for a distance of 223.05 feet to a ½" rebar;
Thence South 31°11'36" West (S 31°25'17" W, rec.) for a distance of 151.12 feet (150.58', rec.) to a ½" rebar;
Thence South 40°09'49" East (S 40°03'36" E, rec.) for a distance of 186.16 feet to a ½" rebar on the West Right-of-Way of State Highway 27;
Thence South 33°39'41" West along said highway Right-of-Way for a distance of 957.75 feet to a concrete Right-of-Way marker on the South line of the NE¼SE¼;
Thence North 89°25'23" West along the South line of the N½SE¼ for a distance of 1946.35 feet to a 5/8" rebar at the SW corner of the NW¼SE¼;
Thence North 89°25'23" West for a distance of 25.36 feet to a ½" rebar;
Thence North 00°20'27" West for a distance of 1323.00 feet to a ½" rebar on the North line of the NE¼SW¼;
Thence South 89°26'30" East along the North line of the N½SW¼ for a distance of 22.58 feet to the Center ¼ corner of Section 21;
Thence South 89°26'30" East along the N½SE¼ for a distance of 2654.88 feet to the Point of Beginning.

ALL IN CASSIA COUNTY, STATE OF IDAHO

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T080348

TWIN FALLS COUNTY
RECORDED FOR:
TWIN FALLS TITLE
4:17:38 pm 05-01-2008
2008-009853
NO. PAGES: 15 FEE: \$45.00
KRISTINA GLASCOCK
COUNTY CLERK
DEPUTY: CHICE

IDAHO OPEN-END MORTGAGE

No. 7616456500

TOTAL PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE SHALL NOT EXCEED:\$1,000,000.00

This Mortgage, dated April 30, 2008 is by **Blackrock Land Holdings, L.L.C., an Idaho Limited Liability Company** after this called "Mortgagor" whether one or more) whose mailing address is 837 Madrona Street South, Twin Falls, Idaho 83301 to **Agri-Access®,*** (after this called "Mortgagee"), a federally chartered corporation with principal offices at PO Box 7438, 3555 9th Street, Ste 400, Rochester MN, 55901.

For valuable consideration, Mortgagor grants, sells, mortgages and warrants to Mortgagee, its successors and assigns, forever, the real estate in **Twin Falls County, Idaho**, described in Exhibit A to this Mortgage, which is by this reference made a part of this Mortgage, together with all the tenements, hereditaments and appurtenances belonging or in any way appertaining to this real estate. All of the preceding property and property rights, including the real estate described in Exhibit A, are after this collectively called "the Mortgaged Property".

THIS MORTGAGE SECURES: (a) the repayment of indebtedness in the principal sum of \$1,000,000.00, which Mortgagee has previously or along with this Mortgage advanced or is obligated to advance, evidenced by the Bond(s) as described in a Bond Purchase Agreement dated April 30, 2008, (after this called "Bond(s)"), as follows:

Date of Bond(s)	Face Amount (\$)	Maturity Date
April 30, 2008	1,000,000.00	May 1, 2023

and any other indebtedness payable to Mortgagee evidenced by Bond(s) secured by prior liens on the real estate described in Exhibit A, together with interest as provided in the Bond(s), and all extensions, renewals, and modifications thereof; (b) the repayment fo all additional advances which Mortgagee may make from time to time to the Mortgagor or to the issure of the Bond(s) pursuant to the terms of the Bond Purchase Agreement prior to the release of this Mortgage, whether made before or after the maturity of the Bond(s) and whether evidenced by the same or other Bond(s) given after this Mortgage, with interest as provided in the Bond(s), and all extensions, renewals and modifications thereof. However, the maximum principal amount secured by this Mortgage at any one time, exclusive of interest, shall not exceed \$1,000,000.00 in the aggregate. If the unpaid principal amount at any one time exceeds this sum, this Mortgage shall secure that portion of the unpaid principal amount that does nto exceed this sum, and interest thereon;

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(c) notwithstanding the above limitation, the repayment of all other amounts with interest to which Mortgagee may become entitled under this Mortgage; and (d) the performance and observance by Mortgagor of all the warranties, agreements and terms contained in this Mortgage and the Bond Purchase Agreement.

By execution of this Mortgage, Mortgagor hereby acknowledges receipt of all of the proceeds evidenced by the above Bond(s).

All principal, interest and other sums or charges payable to Mortgagee and secured by this Mortgage are after this called the "Indebtedness."

If the Indebtedness is paid to Mortgagee when due and Mortgagor keeps and performs all the warranties, agreements and terms contained in this Mortgage, then this Mortgage shall be void.

MORTGAGOR WARRANTS THAT: (a) Mortgagor has fee simple title to the Mortgaged Property and good right to convey it, (b) Mortgagee shall quietly enjoy and possess the Mortgaged Property, and (c) except as expressly set forth in this Mortgage, the Mortgaged Property is free from all encumbrances and Mortgagor will warrant and defend title to the Mortgaged Property against all lawful claims.

MORTGAGOR AGREES AS FOLLOWS:

1. **Discharge Liens.** To pay and discharge when due all present and future taxes, assessments, judgments, mortgages and liens on the Mortgaged Property and to perform every obligation imposed upon Mortgagor by the instruments creating these liens.

2. **Insurance.** (a) Risks to be Insured. The Mortgagor will at its expense maintain with insurers satisfactory to the Mortgagee such insurance as may be required by the Bond Purchase Agreement. (b) Damage or Destruction of the Mortgaged Property. Mortgagor shall give the Mortgagee prompt notice of any damage to or destruction of the Mortgaged Property and in case of loss covered by policies of insurance, the Mortgagee (whether before or after foreclosure sale) is hereby authorized at its option to settle and adjust any claim arising out of such policies and collect and receive the proceeds payable therefrom, provided, that the Mortgagor may itself adjust and collect for any losses arising out of a single occurrence aggregating not in excess of \$25,000.00. Any expense incurred by the Mortgagee in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage on behalf of Mortgagee) shall be reimbursed to the Mortgagee first out of any proceeds. The proceeds or any part thereof shall be applied to reduction of the Indebtedness then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee. (c) Delivery of Insurance Certificates. The Mortgagor will deliver to the Mortgagee certificates evidencing the existence of all insurance policies with respect to the Mortgaged Property which the Mortgagor is required to maintain or cause to be maintained pursuant to this paragraph together with evidence as to the payment of all premiums then due thereon.

3. **Condemnation.** Mortgagor shall give the Mortgagee prompt notice of any actual or threatened condemnation or eminent domain proceedings affecting the Mortgaged Property and hereby assigns, transfers, and sets over to the Mortgagee the entire proceeds of any award or claim for damages or settlement in lieu thereof for all or any part of the Mortgaged Property taken or damaged under such eminent domain or condemnation proceedings, the Mortgagee being hereby authorized to intervene in any such action and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Mortgagor will not enter into any agreements with the condemning authority permitting or consenting to the taking of the Mortgaged Property or agreeing to a settlement unless prior written consent of Mortgagee is obtained. Any expenses incurred by the Mortgagee in intervening in such action or collecting such proceeds, including reasonable attorney's fees, shall be reimbursed to the Mortgagee first out of the proceeds. The proceeds or any part thereof shall be applied upon or in reduction of the Indebtedness secured hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee.

4. **Disbursement of Insurance and Condemnation Proceeds.** (a) Restoration of Mortgaged Property. Any restoration or repair of the Mortgaged Property shall be done under the supervision of an architect or general contractor acceptable to Mortgagee and pursuant to plans and specifications approved by the Mortgagee. In such case where Mortgagee may elect to apply the proceeds to repair or restoration or permit the Mortgagor to so apply the proceeds, then the proceeds shall be held by Mortgagee for such purposes and will from time to time be disbursed by Mortgagee to defray the costs of such restoration or

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repair under such safeguards and controls as Mortgagee may establish to assure completion in accordance with the approved plans and specifications and free of liens or claims. Mortgagor shall on demand deposit with Mortgagee any sums necessary to make up any deficits between the actual cost of the work and the proceeds and provide such lien waivers and completion bonds as Mortgagee may reasonably require. Any surplus which may remain after payment of all costs of restoration or repair may at the option of the Mortgagee be applied on account of the Indebtedness secured hereby then most remotely to be paid, whether due or not, without application of any prepayment premium or shall be returned to Mortgagor as Mortgagor's interest may appear, the choice of application to be solely at the discretion of Mortgagee. (b) Disbursement of Proceeds. Notwithstanding the foregoing provisions regarding the disposition of insurance and condemnation proceeds, but only if Mortgagor meets the following conditions, Mortgagee will not elect to apply all of such proceeds to the Indebtedness, but shall hold such proceeds in an escrow account, from which account the proceeds may be withdrawn only by Mortgagee and shall be readvanced to Mortgagor for the purpose of reconstructing or restoring the Mortgaged Property under the following terms and conditions. Mortgagee shall make insurance proceeds available to Mortgagor ONLY IF: (i) at the time of the occurrence of the event for which proceeds are being received and at the time of the receipt of such proceeds, there is no existing uncured Event of Default hereunder; and (ii) the total proceeds to be received, together with such other sums as Mortgagor may deposit with Mortgagee, shall be sufficient, in Mortgagee's opinion, to restore the Mortgaged Property to its original condition. All such proceeds and sums shall be held by Mortgagee in an interest-bearing deposit account under the sole and exclusive control and dominion of Mortgagee, and Mortgagor shall have no right to withdraw or otherwise direct the payment of any funds from such account. If Mortgagor qualifies for the right to use such proceeds for the reconstruction and restoration of the Mortgaged Property, then Mortgagee shall advance such proceeds and sums to Mortgagor in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, without limitation, Mortgagee's right to require such items as a sworn construction statement, recordable lien waivers and appropriate title insurance endorsements. Any excess proceeds and sums and interest thereon not required to complete such restoration shall, at Mortgagee's option, be applied first to payment of the Indebtedness secured hereby in such manner as Mortgagee shall determine with any excess to be paid to Mortgagor.

5. Protective Advances. If Mortgagor fails to pay taxes, assessments, judgments, mortgages or other liens on the Mortgaged Property or to maintain insurance as required by this Mortgage, Mortgagee may do so.

6. Pro Rata Payments. Mortgagee may, at its option, require Mortgagor to pay to Mortgagee, at the same time as each regular installment of principal and interest, an amount equal to a pro rata portion of the taxes, assessments and insurance premiums next to become due, as estimated by Mortgagee.

7. Protective Actions. In any collection or foreclosure activities or proceedings, or if Mortgagor fails to perform any agreement or term contained in this Mortgage, or if any proceeding is commenced which affects Mortgagee's interest in the Mortgaged Property (including but not limited to eminent domain, insolvency, bankruptcy code enforcement or probate), Mortgagee may (but is not obligated to) make such appearances, disburse such sums and take such actions as Mortgagee believes are necessary to protect its interest or preserve the value of the Mortgaged Property. This includes, but is not limited to, disbursement of reasonable attorneys' fees, court costs, costs of environmental audits and compliance, costs of appraisals and title evidence, and making repairs and maintenance. Mortgagee may inspect the Mortgaged Property at reasonable times including investigating the environmental condition of the Mortgaged Property and taking soil and water samples.

8. Additions to Indebtedness. All amounts incurred or advanced by Mortgagee under paragraph 4 or 5 of this Mortgage shall be due immediately, shall bear interest as provided in the Bond described in this Mortgage or the Bond with the latest maturity date if more than one is described, and shall be secured by this Mortgage.

9. Maintain Mortgaged Property. (a) To not remove or permit to be removed any buildings, improvements or fixtures from the Mortgaged Property, (b) to maintain the Mortgaged Property in good repair and condition, (c) to cultivate the Mortgaged Property in a good, husbandlike manner, (d) to use the Mortgaged Property for farm purposes (if used for farm purposes on the date of this Mortgage), (e) to not cut or remove wood or timber from the Mortgaged Property except for domestic use, and (f) to neither commit nor permit waste of the Mortgaged Property. If the Mortgaged Property is abandoned or left

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unoccupied Mortgagee may (but is not obligated to) go upon the Mortgaged Property to protect it against waste, vandalism or other damage without liability for trespass.

10. Complete Improvements. To complete in a reasonable time any improvements now or later under construction on the Mortgaged Property.

11. Use of Bond Proceeds. The proceeds of the Indebtedness shall be used solely for (a) the purposes specified in the Bond application, Bond, Bond Purchase Agreement or, (b) other purposes Mortgagee may require or agree to in writing.

12. Assignment of Rents. To further secure the payment of the Indebtedness, Mortgagor by this Mortgage assigns to Mortgagee the rents and profits of the Mortgaged Property now due or which may later become due. Upon Default under this Mortgage by Mortgagor, Mortgagee shall immediately and without any further action to enforce its interest have an enforceable and perfected right to receive such rents and profits continuing through the entire redemption period from any foreclosure sale. Rents and profits so received shall be applied to the Indebtedness. This assignment shall be enforceable with or without appointment of a receiver.

13. Minerals and Eminent Domain. In this paragraph 13, "minerals" includes but is not limited to oil, gas, coal, lignite, rock, stone, gravel, sand, clay, peat and earth. Mortgagee shall, at its option, receive all sums which may accrue to Mortgagor from eminent domain proceedings or from the sale, lease, development or removal of minerals in and under the Mortgaged Property. These sums shall be applied to the Indebtedness as Mortgagee elects. Nothing in this Mortgage, however, obligates Mortgagee to accept these sums or constitutes consent to the sale, lease, development or removal of minerals, or obligates Mortgagee to receive any payment during foreclosure or a redemption period. If a lawful claimant enters or asserts a right of entry on the Mortgaged Property for the purpose of exploration, development or removal of minerals under reservation or conveyance paramount to this Mortgage, to the exclusion of and without compensation to Mortgagor, then, at the option of Mortgagee, the entire Indebtedness shall become due and payable.

14. Actions Not Affecting Lien or Liability. Without affecting the priority of the lien of this Mortgage or the liability of Mortgagor or of any other party for the payment of the Indebtedness, Mortgagee may from time to time without notice to Mortgagor: (a) release all or a part of the Mortgaged Property from the lien of this Mortgage, (b) extend and defer the maturity of and renew and reamortize all or any part of the Indebtedness, (c) adjust interest rates as provided in the Bond(s) and (d) release from liability for payment of the Indebtedness one or more parties who are or become liable for its payment.

15. Hazardous Substances. To comply with all federal, state and local laws and the recommendations of all courts and government agencies concerning the generation, use, discharge, release, storage and disposal of hazardous substances, petroleum products and general waste on the Mortgaged Property. Mortgagor warrants that no hazardous substances have previously been discharged, released, stored or disposed of on the Mortgaged Property and will take all remedial action necessary to remove any hazardous substance found on the Mortgaged Property during the term of this Mortgage or after default by Mortgagor. Mortgagor will indemnify Mortgagee, its directors, officers, employees and agents against all claims and losses, including court costs and attorneys' fees, arising directly or indirectly out of Mortgagor's failure to comply with this paragraph. This warranty and indemnity shall survive termination of this Mortgage.

16. Events of Default. Each of the following constitutes a default of this Mortgage by Mortgagor (Default): (a) failure to pay when due any part of the Indebtedness; (b) failure to perform or observe any warranty, agreement or term contained in this Mortgage or in any Bond(s) evidencing the Indebtedness or in any related Bond purchase agreement(s); (c) the appointment of a receiver, receiver pendente lite or liquidator, whether voluntary or involuntary, for the Mortgagor or for any of the property of the Mortgagor; (d) the filing of a petition by or against the Mortgagor under the provisions of any state insolvency law or the Bankruptcy Reform Act of 1978, as amended; (e) the making by the Mortgagor of an assignment for the benefit of creditors; (f) the sale or transfer without Mortgagee's prior written consent of all, any part of, or any interest in, the Mortgaged Property or any beneficial interest in a land trust holding title to the Mortgaged Property by Mortgagor or any party having a beneficial interest in the land trust; (g) the transfer without Mortgagee's prior written consent of stock in a corporation holding title to all or any part of the Mortgaged Property by any stockholder of such corporation, if the result is that a majority of shares of the stock is owned by any parties who are not stockholders at the date of this Mortgage.

17. Remedies on Default. Mortgagee may do any one or more of the following if a Default occurs under

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paragraph 16: (a) The entire Indebtedness may become immediately due without notice and bear interest as provided in the Bond(s) evidencing the Indebtedness and Mortgagee may collect this amount in a suit at law or by foreclosure of this Mortgage (judicially or by power of sale) or both; (b) Sell and convey the Mortgaged Property at public auction and execute to the purchaser(s), deeds of conveyance in accordance with the statutes; (c) At any sale held pursuant to this power of sale or pursuant to a court decree all of the Mortgaged Property may be sold as one parcel and any law to the contrary is waived by Mortgagor; (d) Mortgagee may retain out of the sale proceeds amounts due Mortgagee under this Mortgage, the costs of the sale, and attorneys' fees as provided by statute or in a reasonable amount; (e) In any foreclosure action or other proceeding the court may appoint a receiver and receiver pendente lite for the Mortgaged Property with the usual powers provided by statute, and Mortgagor hereby consents to the appointment; (f) If there is any security other than this Mortgage for the Indebtedness, then Mortgagee may proceed upon this and the other security either concurrently or separately in any order it chooses; (g) If this Mortgage secures multiple Bonds, Mortgagee may apply foreclosure sale proceeds to the Bonds in the order and amounts it elects.

18. **Cumulative Rights.** All rights and remedies of Mortgagee in this Mortgage are cumulative and are in addition to other rights and remedies given in this Mortgage or provided by law.

19. **Waiver.** The failure or delay of Mortgagee to exercise any right is not a waiver of that right.

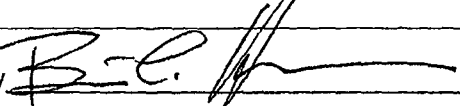

20. **Successors.** This Mortgage shall bind and benefit the parties to this Mortgage and their respective heirs, executors, administrators, successors and assigns.

21. **Conformed Copy and Default Notice.** If required by Idaho law, Mortgagee will: (a) provide Mortgagor with a conformed copy of this Mortgage and the Bond(s) it secures at the time they are executed or within a reasonable time after the recording of the Mortgage, and (b) if Mortgagee intends to foreclose this Mortgage, give Mortgagor written notice of any default under the terms or conditions of this Mortgage or the Bond(s) secured hereby. The notice will be sent by certified mail to the address of the Mortgaged Property, or such other address as Mortgagor designates in writing to Mortgagee. The notice will contain the following provisions: (a) the nature of the default; (b) the action required to cure the default; (c) a date not less than 30 days from the date the notice is mailed by which the default must be cured; (d) that failure to cure the default by the specified date will result in acceleration of the sums secured by the Mortgage and sale of the Mortgaged Property; (e) that Mortgagor has the right to reinstate the Mortgage after acceleration; and (f) that Mortgagor has the right to bring a court action to assert the nonexistence of a default or any other defense of Mortgagor to acceleration and sale.

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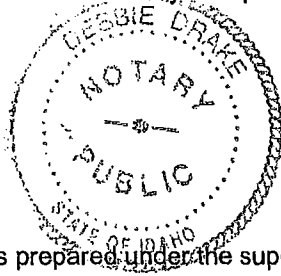
Blackrock Land Holdings, L.L.C., an Idaho Limited Liability Company

By 	By 
Name: Brian Hansen, in his capacity as Member of Blackrock Land Holdings, L.L.C.	Name: Brandon Hansen, in his capacity as Member of Blackrock Land Holdings, L.L.C.

ACKNOWLEDGMENTS

STATE OF IDAHO)
COUNTY OF Twin Falls) ss. (L.L.C.)

The foregoing instrument was acknowledged before me this 30 day of April, 2008, by Brian Hansen and Brandon Hansen, the manager(s) or members(s) of Blackrock Land Holdings, L.L.C., a Limited Liability Company, on behalf of the company.



Debbie Drake
Name: Debbie Drake
Notary Public, State of IDAHO
Commissioned in IDAHO County
Residing at: Twin Falls, Idaho
My commission expires: 04-13-2012

This instrument was prepared under the supervision of Legal Counsel for the Mortgagee herein by:

Tim Anderson

(Name)

1921 Premier Drive, Mankato, MN

(Address)

EXHIBIT A

PARCEL 1

Township 11 South, Range 18 East Boise Meridian, Twin Falls County, Idaho

Section 25: That part of the SW $\frac{1}{4}$ situated South of the Twin Falls Canal Co. Ltd., "High Line Canal" and West of Rock Creek;

EXCEPTING the following described parcel:

BEGINNING at the Southwest corner of Section 25, the TRUE POINT OF BEGINNING;

Thence North 424.12 feet along the Westerly boundary of said SW $\frac{1}{4}$;

Thence East 200.00 feet;

Thence South 3°20'19" East 428.71 feet to the Southerly boundary of said SW $\frac{1}{4}$;

Thence North 89°01'01" West 225.00 feet along the Southerly boundary of the SW $\frac{1}{4}$ to the True Point of Beginning.

AND EXCEPT that portion thereof more particularly described as follows:

Beginning at intersection of centerline of the High Line Canal and East right-of-way line of the present road, which point is approximately 668 feet North and 25 feet East from the Southwest corner of said Section;

Thence Northeasterly along the center line of said High Line Canal 14 feet, more or less, to a point which point bears South 89°17' East 35 feet from Road Station 363+47;

Thence South 0°43' West along a line parallel to and 35 feet Easterly from the centerline of said road 153 feet, more or less, to a point;

Thence South 5°59' West 100.5 feet more or less, to a point on the East right-of-way line of the present road;

THENCE North along said East right of way line 243 feet, more or less, to the Point of Beginning.

AND ALSO EXCEPT

An irregular parcel of land on the Easterly side of the centerline of road as surveyed and shown on the official plat of Hansen-Rock Creek S-220(4) road survey on file in the office of Department of Public Works of the State of Idaho, and lying in a portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section, described as follows;

Beginning at a point on the Easterly right of way line of the present road, which point is approximately 925 feet North and 25 feet East from the Southwest corner of said Section, which point of beginning bears South 89°17' East 25 feet from road Station 361+00;

Thence South 5°00' East 100.5 feet, more or less, to a point;

Thence South 0°43' West along a line parallel to and 35 feet East from the centerline of road, 147 feet more or less to a point on the centerline of the High Line Canal;

Thence Southwesterly along the centerline of said canal 14 feet, more or less, to a point on the Easterly right-of-way line of the present road;

Thence North along the right-of-way line of the present road 257 feet, more or less, to the Point of Beginning.

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SUBJECT TO: Twin Falls County Highway Right of Way

PARCEL 2

Township 10 South, Range 17 East Boise Meridian, Twin Falls County, Idaho;

Section 7: A portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ more particularly described as follows:
Beginning at the South quarter corner of Section 7;

Thence North 1°15'51" East 280.40 feet along the Easterly boundary of SE $\frac{1}{4}$ SW $\frac{1}{4}$ to the True Point of Beginning;

Thence North 1°15'51" East 936.00 feet along said Easterly boundary;
Thence North 88°57'18" West 791.00 feet;
Thence South 1°15'51" West 936.00 feet;
Thence South 88°57'18" East 791.00 feet to the True Point of Beginning.

ALL SUBJECT TO: Twin Falls County Highway Rights of Way

PARCEL 3

Township 10 South Range 17 East Boise Meridian, Twin Falls County, Idaho
Section 7: SE $\frac{1}{4}$ SW $\frac{1}{4}$; Lot 4

EXCEPT

Commencing at the Northwest corner of said Lot 4;
Thence South 236 feet to a stone;
Thence East 541 feet to a stone;
Thence North 245 feet to a stone;
Thence West 541.7 feet to the Place of Beginning.

AND

Township 10 South Range 17 East Boise Meridian, Twin Falls County, Idaho

Section 7: NE $\frac{1}{4}$ SW $\frac{1}{4}$

EXCEPT

A triangular tract of 7 acres, more or less, lying in the Northeast corner thereof and below the rim rock of Rock Creek Canyon.

AND

Township 10 South Range 17 East Boise Meridian, Twin Falls County, Idaho

Section 7: That part of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ more particularly described as follows:
Beginning at the Southwest corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$;
Thence East along the South boundary line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ to the edge of the bluff or rim rock of Rock Creek Canyon;
Thence Northwesterly along said rim rock to the intersection of said rim rock with the West line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$;
Thence South along said boundary line to the Point of Beginning.

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PARCEL 4

Township 10 South, Range 17 East Boise Meridian, Twin Falls County, Idaho
Section 18: That part of Lot 1 and the NE¼NW¼ lying North of U.S. Highways Number 93 and 30.

SUBJECT TO Highway district right of way.

EXCEPT

Township 10 south, Range 17 East, Boise Meridian, Twin Falls County, Idaho

Section 7: A parcel of land located in the SE¼SW¼ and Section 18: NE¼NW¼ more particularly described as follows:

Commencing at the one-quarter corner common to said Sections 7 and 18 and from which the Southwest corner of Section 7 and Northwest corner of Section 18 bears North 89°58'20" West 1839.83 feet, said one-quarter corner being the True Point of Beginning;

Thence South 00°02'15" East along the East boundary of the NW¼ of Section 18 for a distance of 149.77 feet to a point on the proposed future North right-of-way boundary of U.S. Highway 30;

Thence North 89°41'28" West along the proposed North right-of-way boundary of U.S. Highway 30 for a distance of 325.00 feet;

Thence North 00°29'17" East parallel with the East boundary of the SW¼ of Section 7 for a distance of 403.59 feet to a point on the centerline of a 50.0-foot-wide access road;

Thence South 89°58'20" East along the centerline of the 50.0 foot-wide access road for a distance of 323.64 feet to a point on the East boundary of the SW¼ of Section 7;

Thence South 00°29'17" West along the East boundary of the SW of Section 7 for a distance of 255.41 feet to the True Point of Beginning

SUBJECT TO a 25.0 -foot-wide access easement for the purpose of ingress and egress on, over across said easement, said easement being adjacent to and on the Southerly side of the North boundary of the before described parcel.

AND EXCEPT

Township 10 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho
Section 7: A portion of the SE¼SW¼ more particularly described as follows:

BEGINNING at the South quarter corner for Section 7;

Thence North 1°15'51" East 280.40 feet along the Easterly boundary of SE¼SW¼ to the True Point of Beginning;

Thence North 1°15'51" East 936.00 feet along said Easterly boundary;

Thence North 88°57'18" West 791.00 feet;

Thence South 1°15'51" West 936.00 feet;

Thence South 88°57'18" East 791.00 feet to the True Point of Beginning.

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PARCEL 5

Township 9 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho

Section 13: A parcel of land located in the NW¼ of said Section 13, more particularly described as follows:

Commencing at the Northwest corner of Section 13, said point lies North 89°50'00" West 2604.03 feet from the North quarter corner of Section 13;

Thence South 89°50'00" East, 438.56 feet to the Real Point of Beginning;

Thence South 89°50'00" East, 1993.12 feet;
Thence South 14°34'53" West, 221.74 feet;
Thence North 88°18'33" West, 133.01 feet;
Thence South 79°20'17" West, 260.92 feet;
Thence South 83°34'47" West, 105.91 feet;
Thence South 78°42'40" West, 165.35 feet;
Thence south 83°14'49" West, 193.47 feet;
Thence North 75°35'08" West, 650.46 feet;
Thence North 72°44'20" West, 257.23 feet;
Thence North 66°17'17" West, 232.39 feet to the Real Point of Beginning.

SUBJECT TO: Highway Right of Way

PARCEL 6A

Township 9 South, Range 15 East Boise Meridian, Twin Falls County, Idaho

Section 12: a tract of land located in the S½ more particularly described as follows;

Beginning at the South quarter corner of said Section 12;

Thence North 89°26'30" West a distance of 2172.02 feet along the Southerly boundary of the SW¼ of said Section 12 to the Easterly boundary of the County Road;

Thence North 62°38'53" West a distance of 118.81 feet along the Easterly boundary of said County Road;

Thence Northwesterly 391.42 feet on the arc of a curve to the right with a radius of 256.43 feet, a central angle of 87°27'27" and a chord which bears North 18°55'09" West a distance of 354.51 feet to a point of curvature on said East right-of-way line;

Thence North 24°48'34" East a distance of 59.62 feet along said Easterly right-of-way boundary;
Thence North 65°11'26" West a distance of 5.00 feet along said Easterly right-of-way boundary;
Thence North 24°48'34" East a distance of 33.05 feet along said Easterly right-of-way boundary;

Thence South 64°36'45" East a distance of 32.33 feet;
Thence North 52°40'52" East a distance of 58.39 feet;
Thence North 40°31'43" East a distance of 83.27 feet;
Thence North 50°26'48" East a distance of 30.00 feet;
Thence North 83°19'26" East a distance of 81.70 feet;
Thence South 88°26'48" East a distance of 135.39 feet;

Thence South 85°35'28" East a distance of 122.43 feet;
Thence South 83°52'11" East a distance of 118.90 feet;
Thence South 81°48'43" East a distance of 428.32 feet;
Thence South 80°11'24" East a distance of 1351.11;

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Thence North 86°27'27" East a distance of 461.25 feet;
Thence South 15°01'25" West a distance of 337.72 feet to a point on the Southerly boundary of said Section 12;

Thence North 89°24'28" West a distance 379.76 feet along the Southerly boundary of said Section to the True Point of Beginning.

PARCEL 6B

AND ALSO INCLUDING an easement for the purpose of ingress, egress and utilities over a strip of ground 60 feet in width located in the S½ of Section 12, Township 9 South, Range 15 East Boise Meridian, Twin Falls county Idaho, more particularly described as follows:

Beginning at the South quarter corner of said Section 12;

Thence South 89°24'28" East a distance of 379.76 feet along the Southerly boundary of the SE¼ of said Section 12;

Thence North 15°01'25" East a distance of 274.43 feet to the True Point of Beginning;

Thence South 86°27'27" West a distance of 448.12 feet;

Thence North 80°11'24" West a distance of 1357.28 feet;

Thence North 81°48'43" West a distance of 426.39 feet;

Thence North 83°52'11" West a distance of 116.93 feet;

Thence North 85°35'28" West a distance of 120.03 feet;

Thence North 88°26'48" West a distance of 129.58;

Thence South 83°19'26" West a distance of 59.68 feet;

Thence South 50°26'48" West a distance of 7.09 feet;

Thence South 40°31'43" West a distance of 84.45 feet;

Thence South 52°40'52" West a distance of 101.33 feet;

Thence South 88°00'08" West a distance of 70.90 feet;

Thence North 24°48'34" East a distance of 59.62 feet;

Thence North 65°11'26" West a distance of 5.00 feet;

Thence North 24°48'34" East a distance of 33.05 feet;

Thence South 64°36'45" East a distance of 32.33 feet;

Thence North 52°40'52" East a distance of 58.39 feet;

Thence North 40°31'43" East a distance of 83.27 feet;

Thence North 50°26'48" East a distance of 30.00 feet;

Thence North 83°19'26" East a distance of 81.70 feet;

Thence South 88°26'48" East a distance of 135.39 feet;

Thence South 85°35'28" East a distance of 122.43 feet;

Thence South 83°52'11" East a distance of 118.90 feet;

Thence South 81°48'43" East a distance of 428.32 feet;

Thence South 80°11'24" East a distance of 1351.11 feet;

Thence North 86°27'27" East a distance of 461.25 feet;

Thence South 15°01'25" West a distance of 63.29 feet to the True Point of Beginning.

PARCEL 8

Township 12 South, Range 18 East Boise Meridian, Twin Falls County, Idaho

Section 13: A parcel of land described on Reclamation Plan No. RP-849 and more particularly described as follows:

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Starting at a point located in the Southeast corner of the W $\frac{1}{2}$ SE $\frac{1}{4}$ as the True Point of Beginning;

Thence North parallel to the Section line 300 feet;

Thence West parallel to the Section line 1452 feet;

Thence parallel to the Section line 300 feet;

Thence East along the Southerly Section line 1,452 feet to the True Point of Beginning, as shown on Reclamation Plan No. RP-849.

PARCEL 10 (A)

Township 11 South, Range 18 East Boise Meridian, Twin Falls County, Idaho

Section 35: A parcel of land in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ more particularly described as follows:

Beginning at a point on the East Section line of Section 35 located approximately 1,889.51 feet South of the Northeast corner of said Section 35:

Thence North 82°45' West approximately 513.79 feet to the Real Point of Beginning;

thence Northwesterly along a 1116.28 foot radius curve right having a long chord of 297.52 feet bearing North 75°05'39" West approximately 298.32 feet to a point of tangency;

Thence North 67°26' West approximately 197.68 feet;

Thence North 02°07'36" West approximately 294.26 feet;

Thence South 39°25'40" East approximately 55.25 feet;

Thence South 46°02'54" East approximately 91.57 feet;

Thence South 48°46'15" East approximately 157.60 feet;

Thence South 47°15'48" East approximately 298.78 feet;

Thence South 51°19'59" East approximately 53.76 feet to the Real Point of Beginning.

PARCEL 10 (B)

Township 11 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho

Section 35: A parcel of land in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and being more particularly described as follows:

Commencing at the Northeast corner of Section 35;

Thence a distance of 1500.00 feet on a bearing of South along the East boundary of said Section 35;

thence a distance of 803.92 feet on a bearing of North 89°30'34" West to the Real Point of Beginning;

Thence from this Real Point of Beginning a distance of 1363.51 feet on a bearing of North 16°14'53" West to the Southerly right of way of the Twin Falls Canal Company's High Line Canal;

Thence along the said Southerly right of way of the Twin Falls Canal Company's High Line Canal the following courses and distances;

North 58°59'11" West 107.75 feet;

North 49°07'49" West 83.96 feet;

North 39°22'26" West 108.15 feet to the North boundary of said Section 35;

Thence a distance of 345.60 feet on a bearing of North 89°35'57" West along the North boundary of said Section 35;

Thence along the centerline of an existing irrigation ditch the following courses and distances:

South 00°12'00" West 487.62 feet;

South 13°16'55" East 32.74 feet;

South 35°35'01" East 43.54 feet;

South 46°04'51" East 161.11 feet;

South 48°27'50" East 79.80 feet;

South 50°46'22" East 269.87 feet;

South 39°08'16" East 32.21 feet;

South 33°22'27" East 332.39 feet;

South 34°56'08 East 168.68 feet;

South 39°25'40 East 132.39 feet;

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South 46°02'54" East 91.57 feet;
South 48°46'15" East 70.21 feet;
Thence a distance of 50.00 feet on a bearing of North 41°13'45" East to the Real Point of Beginning,

PARCEL 10 (C)

Township 11 South, Range 18 East Boise Meridian, Twin Falls County, Idaho
Section 35: A parcel of land in the SE¼NE¼ more particularly described as follows:
Commencing at the Northeast corner of Section 35;
Thence a distance of 1,500.00 feet on a bearing of South along the East boundary of said Section 35 to the Real Point of Beginning;
Thence from the Real Point of Beginning a distance of 803.92 feet on a bearing of North 89°30'34" West;
Thence a distance of 50.00 feet on a bearing of South 41°13'45" West
Thence along the centerline of an existing irrigation ditch the following courses and distances:
South 48°46'15" East 87.39 feet;
South 47°15'48" East 298.78 feet;
South 51°19'59" East 144.13 feet
South 61°52'29" East 128.44 feet;
Thence South 82°45'09" East 299.86 feet;
South 89°30'34" East 28.40 feet to the East boundary of said Section 35;
Thence a distance of 479.75 feet on a bearing of North long the East boundary of said Section 35 to the Real Point of Beginning.

EXCEPT

A Parcel of land in the SE¼NE¼ Section 35, Township 11 South, Range 18 E., B.M., Twin Falls County, Idaho, and being more particularly described as follows:
Commencing at the Northeast corner of Section 35;
Thence South a distance of 1889.33 feet along the East boundary of said Section 35 to the North boundary of a 60-foot-wide public road right of way and the Real Point of Beginning;
Thence from the Real Point of Beginning and continuing along the said East boundary of Section 35 South a distance of 60.48 feet to the South boundary of a 60-foot-wide public road right of way;
Thence along the South boundary of a 60-foot-wide public road right of way North 82°45'00" West a distance of 411.00 feet to the centerline of an irrigation ditch that existed in 1976;
Thence along the centerline of an irrigation ditch that existed in 1976 the following courses and distances:
North 61°52'59" West 35.68 feet;
North 51°19'59" West 90.94 feet to the North boundary of a 60-foot-wide public road right of way;
Thence along the North boundary of a 60-foot-wide public road right of way on a curve to the left having a central angle of 00°50'03"; a radius of 1115.92 feet; a tangent of 8.12 feet; and arc length of 16.25 feet and a long chord of 16.25 feet on a bearing of South 82°19'58" East;
Thence continuing along the North boundary of a 60-foot-wide public road right of way South 82°45'00" East a distance of 498.02 feet to the Real Point of Beginning.

SUBJECT TO a right of way 25 feet in width for the purpose of constructing and maintaining a public road along the East boundary thereof.

AND EXCEPT

A parcel of land in the SE¼NE¼, Section 35, Township 11 South, Range 18 E., B.M., Twin Falls County, Idaho, and being more particularly described as follows:
Commencing at the Northeast corner of Section 35;
Thence South a distance of 1949.81 feet along the East boundary of said Section 35 to the Real Point of Beginning;
Thence from the Real Point of Beginning and continuing along the East boundary of Section 35 a distance of 29.94 feet;

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Thence along the centerline of an irrigation ditch that existed in 1976 the following courses and distances:
North 89°30'34" West 28.40 feet;
North 82°45'09" West 299.86 feet;
North 61°52'29" West 92.76 feet to the South boundary of a 60-foot-wide public road right of way;
Thence along the South boundary of a 60-foot-wide public road right of way South 82°45'00" East a distance of 411.00 feet to the Real Point of Beginning.

SUBJECT TO a right of way 25 feet in width for the purpose of constructing and maintaining a public road along the East boundary thereof.

AND ALSO EXCEPT

A Parcel of land in the SE¼NE¼ Section 35, Township 11 South, Range 18 E., B.M., being 30 feet in width on each side of the following described centerline;
Beginning at a point on the East section line of Section 35 located approximately 1919.57 feet South of the Northeast corner of said Section 35;
Thence North 82°45' West approximately 468.4 feet to the centerline of an existing ditch;
Thence North 82°45' West approximately 33.44 feet to a point of curvature;
Thence Northwesterly along a 5° curve right having a central angle of 15°19' approximately 306.3 feet to a point of tangency;
Thence North 67°26' West approximately 222.6 feet to a point of curvature;
Thence Northwesterly along a 4° curve left having a central angle of 13°16' approximately 331.7 feet to a point on curve, said point being on the West line of the SE¼NE¼ of said Section 35 located approximately 1677.63 feet North 51°45'16" West of the East quarter corner of said Section 35.

PARCEL 10 (D)

Township 11 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho

Section 35: A parcel of land in the NE¼NE¼ and the SE¼NE¼ and being more particularly described as follows:

Commencing at the Northeast corner of Section 35;
Thence a distance of 238.00 feet on a bearing of 89°35'37" West along the North boundary of said Section 35 to the Real Point of Beginning;
Thence from this Real Point of Beginning and continuing along the North boundary of Section 35 a distance of 343.81 feet on a bearing of North 89°35'37" West to the Southerly right of way of the Twin Falls Canal Company's High Line Canal;
Thence along the said Southerly right of way of the Twin Falls Canal Company's High Line Canal the following courses and distances:
South 41°39'03" West 160.59 feet;
South 58°00'40" West 143.60 feet;
South 71°23'46" West 80.59 feet;
South 81°53'16" West 50.72 feet;
North 87°08'07" West 124.86 feet;
North 74°43'29" West 126.09 feet;
North 58°59'11" West 2.50 feet;
Thence a distance of 1363.51 feet on a bearing of South 16°14'53" East;
Thence a distance of 803.92 feet on a bearing of South 89°30'34" East to the East boundary of said Section 35;
Thence along the said East boundary of Section 35 a distance of 1024.00 feet on a bearing of North;
Thence a distance of 238.00 feet on a bearing of North 89°35'37" West;
Thence a distance of 476.0 feet on a bearing of North to the Real Point of Beginning.

* Agri-Access® is a division and trademark of AgStar Financial Services, ACA. All references to Investor herein shall refer to AgStar Financial Services, ACA.

Bradley J. Dixon, ISB No. 6167
E-mail: bjdixon@stoel.com
 Jennifer M. Reinhardt, ISB No. 7432
E-mail: jmreinhardt@stoel.com
 STOEL RIVES LLP
 101 S Capitol Boulevard, Suite 1900
 Boise, ID 83702
 Telephone: (208) 389-9000
 Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
 TWIN FALLS CO. IDAHO
 FILED

2012 JUL 23 PM 3:24

BY _____ CLERK
 _____ DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
 an Idaho corporation; GORDON PAVING
 COMPANY, INC., an Idaho Corporation;
 BLACKROCK LAND HOLDINGS, LLC,
 an Idaho limited liability company; TOWN
 AND COUNTRY BANK, INC.; and FIRE
 SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**VOLUNTARY DISMISSAL OF
 DEFENDANT TOWN AND COUNTRY
 BANK, INC.**

COMES NOW Plaintiff, AgStar Financial Services, ACA, by and through its attorneys of record, Stoel Rives LLP, and hereby voluntarily dismisses Town and Country Bank, Inc., a named Defendant in the above-captioned matter. On July 6, 2012 Defendant Town and Country Bank, Inc. terminated its interest in the property at issue in this litigation. Defendant Town and

VOLUNTARY DISMISSAL OF DEFENDANT TOWN AND COUNTRY BANK, INC. - 1

71917742 | 0047071-00001

Country Bank has not appeared or otherwise answered and therefore should be dismissed with prejudice from this lawsuit.

DATED: July 23, 2012.

STOEL RIVES LLP

A handwritten signature in black ink, appearing to read 'BJD', is written over a horizontal line.

Bradley J. Dixon
Jennifer M. Reinhardt

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July, 2012, I served a true and correct copy of the foregoing **VOLUNTARY DISMISSAL OF DEFENDANT TOWN AND COUNTRY BANK, INC.** in the above-entitled matter as follows:

<p>Brent T. Robinson, Esq. ROBINSON, ANTHON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: btr@idlawfirm.com</p> <p><i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i></p>	<p><input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

By:


Bradley J. Dixon

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

JUN 19 2013

By _____ 11:45 AM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

vs.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho Corporation; GORDON
PAVING COMPANY INC., and Idaho
Corporation; and BLACROCK LAND
HOLDINGS, LLC, an Idaho limited
liability company,

Defendant.

Case No. CV-2012-2731

ORDER ON PREPAYMENT PENALTY

Having reviewed the contract at issue in this case, the Court finds the relevant portions of the prepayment penalty clause reads as follows:

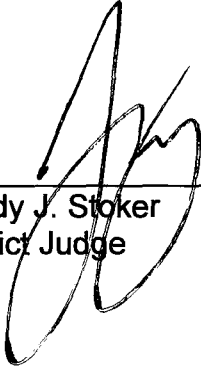
Notwithstanding any language in the Bond or any other document (collectively, "Bond") to the contrary, Issuer shall have no right to make advance payments of principal (hereinafter "prepayment") except for an optional prepayment of principal allowable annually only during the month of December (name of month) ("Optional Prepayment Month") in an amount equal to or less than 10% of the then outstanding principal balance. Prepayments other than those described above shall not be made without investor's consent, which the Investor will grant solely upon the terms and subject to the conditions hereinafter provided. In order to induce the Investor to accept any prepayment, the Issuer agrees to pay the Investor a prepayment fee for such prepayment. A prepayment fee shall be due and payable for each such other prepayment made prior to 12/10/2014, (hereinafter "Fee End Date"). The prepayment fee shall be due and payable for each such advance payment made by the Issuer,

whether made voluntarily or involuntarily, including any prepayment effected by the Investor's exercise of the acceleration clause in the Bond.

Verified Complaint, Exhibit B page 2 ¶ 6 (emphasis added). The agreement is clear that the penalty applies whether the payment is voluntarily or involuntarily made. The Court finds a prepayment penalty shall apply in this case as described above and shall be calculated according to the agreement.

IT IS SO ORDERED.

DATED this 19th day of June 2013.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

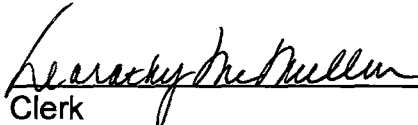
I hereby certify that on the 19 day of June 2013, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Bradley J. Dixon
Stoel Rives
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702

(☒) U.S. Mail
() Hand delivered
(☒) Faxed
() Court Folder

Matthew Darrington
PO Box 396
Rupert, ID 83350

(☒) U.S. Mail
() Hand delivered
(☒) Faxed
() Court Folder


Clerk

Bradley J. Dixon, ISB No. 6167
E-mail: bjdixon@stoel.com
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

JUN 19 2013

By _____ *11:45 AM*
Clerk

Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**JUDGMENT AND DECREE OF
FORECLOSURE**

The Court having heard Defendants' Objection to Special Master's Report at a hearing held on June 3, 2013 and for other good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That final judgment is entered in favor of Plaintiff, AgStar Financial Services, ACA ("Lender"), and against Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc. and

Blackrock Land Holdings, LLC (hereinafter the "Defendants");

a. Principal	\$8,176,242.10
b. Interest (current to 6/14/13; \$1,943.03 per diem)	\$1,100,140.17
c. Late Charges (\$188.85 per diem)	\$79,707.15
d. USDA Guarantee Fees-2011	\$16,463.57
e. USDA Guarantee Fees-2012	<u>\$14,516.18</u>
TOTAL - as of June 14, 2013 accruing interest at the applicable contract rate:	<u>\$9,387,069.17</u>

2. Lender is further entitled to a prepayment premium, ~~pursuant to the agreement of the parties. The Bond, issued on December 10, 2007 in the principal amount of \$9,000,000.00 provides for the assessment of a prepayment fee at Paragraph 6, Page 2. Attached hereto as Exhibit A is a true and correct copy of the Bond. Paragraph 6, Page 2 is incorporated herein by this reference. As of June 14, 2013 Lender has calculated the prepayment premium which equals \$549,418.00. Once the sale date is scheduled Lender is directed to recalculate the prepayment premium and provide this Court with an update calculation within five (5) days of the sale.~~ *Prior to sale.*


An Amended Judgment may then issue if appropriate

3. That the mortgage and security, being foreclosed in this action, grants Lender a good, sufficient and paramount lien on the Real Property Collateral, more particularly described in the Verified Complaint, securing the payment of the obligations evidenced by the bonds at issue in this lawsuit. The interest of Lender has priority and is superior to any claim, right, title or interest of all Defendants, subject to Defendants' right of redemption;

4. That Lender has a good, sufficient and paramount security in the Personal Property Collateral, as described in the Verified Complaint, securing payment of the obligations

evidence by the bonds at issue in this litigation. The interest of Lender has priority and is superior to any claim, right, title or interest of all Defendants, subject to Defendants' right of redemption;

5. That, pursuant to the manner prescribed by Idaho law and according to the rules and practice of this Court, the Sheriff of Twin Falls County, Idaho sell at public auction the Real Property Collateral, and Personal Property Collateral, with proceeds applied first to the Sheriff's commission and costs of sale with the balance applied to satisfy all amounts due and owing to Lender on the judgment set forth above;

6. That Lender or any other party may become a purchaser at such Sheriff's sale; that following such sale, the Sheriff of ^{Twin Falls} ~~Ada~~ County be  ordered to execute and deliver a certificate of sale as required by law to the purchaser of the Real Property and his bill of sale to the purchase of the property. Upon the expiration of the period of redemption, said Sheriff is ordered to execute and deliver a deed to the purchaser or other holder of the certificate of sale of the Real Property Collateral, and after the delivery and production of said Sheriff's deed to the Real Property Collateral, the grantee named therein shall have full ownership and possession of the Real Property Collateral;

7. That in the event Lender is the successful purchaser of the Real Property Collateral and Personal Property Collateral at such sale, then Lender shall promptly pay the Sheriff fees, disbursements and commissions on such sale and if any other person or persons is the successful purchaser or purchasers at such sale, then the Sheriff from the proceeds of such sale shall retain his fees, disbursements and commissions on such sale, shall then apply the proceeds toward the payment of the Judgment rendered herein in favor of the Plaintiff and the surplus, if any, to the Clerk of the Court, there to be held by the Clerk of the Court and subject to

further order of the Court;

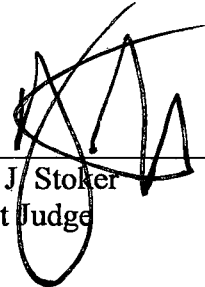
8. That the Defendants and any unknown heirs or devisees of the foregoing named parties who may be deceased, and the unknown owners, claimants and parties in interest claiming to all or any part of the Real Property Collateral or Personal Property Collateral, and each of them, and all persons claiming or to claim from and under them, or any of them, and all persons having liens subject to the mortgage or security by judgment or decree or otherwise upon the Property, or any part or parcel thereof, and their heirs, personal representatives and all persons claiming to have acquired any estate or interest in or to the Real Property Collateral or Personal Property Collateral be, and they hereby are, forever barred and foreclosed of and from all right, title, claim and interest in and to the Real Property Collateral and Personal Property Collateral and in and to every part or parcel thereof, except for such rights of redemption as they may have pursuant thereto, and that said persons, and each of them, be, and they hereby are enjoined and restrained from removing or destroying any of the buildings, the improvements or appurtenances, or otherwise damaging the Real Property Collateral or Personal Property Collateral prior to redemption from such sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the purchaser or purchasers of the Real Property Collateral and Personal Property Collateral at such sale be let into possession thereof consistent with Idaho law and that any of the parties to this action who may be in possession of the Real Property Collateral or Personal Property Collateral or any part thereof, or any person who, since the recording of the Sheriff's levy on this judgment or recording of the decree, whichever shall first occur, has come into possession, or any part thereof, shall deliver possession thereof to such purchaser or purchasers upon the production of a

Sheriff's Certificate of Sale or Deed for the Property or any part thereof, executed by the Sheriff after the Defendants' right of redemption has lapsed.

Jurisdiction of this cause is hereby expressly reserved and retained for the purpose of making such further orders as may be necessary in order to carry this Decree of Foreclosure and Judgment into effect and correct any mathematical error, to grant any accrued credits, or for the purpose of making such further orders as may be necessary or desirable.

DATED this 19th day of June, 2013.



Randy J. Stoker
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of June, 2013, I served by US Mail, postage prepaid a true and correct copy of the foregoing **DECREE OF FORECLOSURE AND JUDGMENT** in the above-entitled matter as follows:

<p>Matthew C. Darrington, Esq. ANTHON DARRINGTON PLLC P.O. Box 536 Rupert, ID 83350 Facsimile: (208) 260-5281 Email: matt@minicassialaw.com</p> <p><i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i></p>	<p><i>faxed/mailed</i></p>
<p>Bradley J. Dixon STOEL RIVES LLP 101 S Capitol Boulevard, Suite 1900 Boise, ID 83702 Facsimile: (208) 389-9040</p> <p><i>Attorneys for Plaintiff</i></p>	<p><i>faxed/mailed</i></p>

By:

Leorocky H. Muller
Clerk of the Court

EXHIBIT A

Assn.	Branch #	CIF #	Bond Acct	Product Code
52	483	5603978	7616454400	3474

Gordon Paving Co., Inc.,
Northwest Sand & Gravel, Inc.,
and
Blackrock Land Holdings, LLC
Bond

PRINCIPAL AMOUNT: \$ 9,000,000.00

DATE OF ISSUE: 12/10/2007

MATURITY DATE: 12/10/2034

INVESTOR: Agri-Access®*

FOR VALUE RECEIVED, Gordon Paving Co., Inc., an Idaho Corporation, Northwest Sand & Gravel, Inc., an Idaho Corporation and Blackrock Land Holdings, LLC, an Idaho Limited Liability Company (the "Issuer") promises to pay to Agri-Access®,* a federally chartered corporation with principal offices at PO Box 7438, 3555 9th Street, Ste 400, Rochester MN, 55901 or to its registered holder (collectively, "Investor"), on or before the Maturity Date, **12/10/2034**, the principal sum of \$ 9,000,000.00 together with interest thereon from the date of disbursement, **12/26/2007**, (the "Disbursement Date"), pursuant to the terms and conditions of this Bond (this "Bond") and that certain Bond Purchase Agreement, of even date herewith, by and between Issuer and Investor (the "Bond Purchase Agreement"). All capitalized terms used in this Bond, but not otherwise defined herein, have the meaning ascribed to them in the Bond Purchase Agreement.

1. INTEREST: The annual rate of interest of the Bond is equal to 6.50% percent ("interest rate"). Interest hereunder shall be computed on the basis of a year of 360 or 365 days as Investor may determine, but charged for actual days principal is outstanding.

After the initial 7 years of the bond, the interest rate stated in this bond is subject to adjustment by the Investor or any subsequent holder of this Bond on each Rate Change Date. Effective on the 7-year anniversary date of the bond and each 7-years thereafter (each a "Rate Change Date"), the Variable Interest Rate shall change to a rate that shall be determined by adding a margin of 2.60% over the weekly average of the Federal Farm Credit Banks (FFCB) Funding Cost Index. The most current prior weekly average prior to the reprice date will be used. If the Index is no longer available, Lender will select a new index, which is based upon comparable information. Rates will be rounded the total to the nearest one-eighth of one percent.

Notwithstanding anything to the contrary in this Bond, Bond Purchase Agreement or any of the Bond Security Documents, Issuer shall not be required to pay unearned interest on this Bond, or ever be required to pay interest on this Bond at a rate in excess of the Maximum Rate, if any. If the effective rate of interest which would otherwise be payable under this Bond, Bond Purchase Agreement or any of the Bond Security Documents would exceed the Maximum Rate, if any, then the rate of interest which would otherwise be contracted for, charged, or received under

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this Bond, Bond Purchase Agreement or any of the Bond Security Documents shall be reduced to the Maximum Rate, if any. For purposes of this Bond, "Maximum Rate" means the maximum nonusurious interest rate, if any, at any time, or from time to time, that may be contracted for, taken, reserved, charged or received under applicable state or federal laws.

2. **DEFAULT INTEREST:** Upon the occurrence of an Event of Default, any payment of principal or, to the extent permitted by applicable law, interest on this Bond not paid when due, whether by regular installment, upon prepayment, by acceleration, at maturity or otherwise, shall thereafter bear interest at a rate per annum equal to 2% in excess of the rate then applicable to this Bond, provided that in no event shall such rate exceed the Maximum Rate.

3. **PAYMENT OF BOND:** *Both principal and interest are due and payable in 324 monthly installments, beginning on the 1st day of the month in the month following closing and monthly thereafter on the first day of each month, and a final installment is due and payable on the Maturity Date. The initial monthly installments of principal and interest will be in the amount of \$58,999.95 and continue until such time as the interest rate is adjusted pursuant to the terms of this Bond.*

4. **USE OF PROCEEDS.** *The Issuer shall use the proceeds of the Bond to refinance debt currently held at Bank of America, Regal Bank and Rural Funding, LLC, pay costs and fees associated with this Bond, as well as fund the shop addition. The Issuer agrees that the proceeds of the Bond are to be used only for the purposes set forth in this Section 4.*

5. **COLLATERAL:** Payment of this Bond and the performance of all obligations of the Issuer under the Bond Purchase Agreement is secured by the Collateral described in the Bond Security Documents.

6. **PREPAYMENT:** The Issuer may prepay this Bond in whole or in part only in the amounts, upon the notice and subject to the conditions set forth herein and in the Bond Purchase Agreement. In the event the Issuer gives notice of any prepayment, such notice must specify the principal amount of this Bond to be prepaid, and the date of proposed prepayment; upon which such principal amount, together with accrued and unpaid interest thereon to the prepayment date and together with the applicable premium, if any, shall become due and payable on the prepayment date. Issuer may make advance payments in any amount and at any time. Notwithstanding any language in the Bond or any other document (collectively, "Bond") to the contrary, Issuer shall have no right to make advance payments of principal (hereinafter "prepayment") except for an optional prepayment of principal allowable annually only during the month of December (name of month) ("Optional Prepayment Month") in an amount equal to or less than 10% of the then outstanding principal balance. Prepayments other than those described above shall not be made without the Investor's consent, which the Investor will grant solely upon the terms and subject to the conditions hereinafter provided. In order to induce the Investor to accept any prepayment, the Issuer agrees to pay the Investor a prepayment fee for each such prepayment. A prepayment fee shall be due and payable for each such other prepayment made prior to 12/10/2014, (hereinafter "Fee End Date"). The prepayment fee shall be due and payable for each such advance payment made by the Issuer, whether made voluntarily or involuntarily, including any prepayment effected by the Investor's exercise of the acceleration clause in the Bond. (a) The prepayment fee due from the Issuer for each such advance payment shall be that amount calculated as follows: (i) compare the Initial Reference Rate, as defined herein, to the Final Reference Rate, as defined herein. If the Initial Reference Rate is less than or equal to the Final Reference Rate, the prepayment fee is zero, and (ii) if the Initial Reference Rate is greater than the Final Reference Rate, the prepayment fee shall be calculated as follows: (A) Calculate an amortization schedule using the Initial

Reference Rate, the amount of the principal prepayment, the prepayment date and the Bond maturity date. If the Fee End Date is prior to the Bond maturity date, assume for purposes of the calculation that all scheduled repayments of principal due on or after the Fee End Date are paid on the Fee End Date, (B) Calculate the interest payment(s) which will accrue on the advance payment(s) of principal through the Fee End Date at the Initial Reference Rate ("Initial Interest Amount(s)"), (C) Calculate the interest payment(s) which will accrue on the advance payment(s) of principal through the Fee End Date at the Final Reference Rate ("Final Interest Amount(s)"), (D) Calculate the "Differential Interest Amount" for each interest payment scheduled through the Fee End Date by subtracting the Final Interest Amount from the Initial Interest Amount for each such payment, and (E) the discounted present value of each Differential Interest Amount shall be calculated by using the Final Reference Rate as the discount rate. The prepayment fee shall be the sum of the discounted present value of each Differential Interest Amount. (b) The following terms shall have the meanings given below when used herein: (A) "Initial Reference Rate" means the annualized interest rate used by the Investor to obtain the Bond funds, which funds are being paid in advance of scheduled payment(s). (B) "Final Reference Rate" means the annualized interest rate Investor would allocate to fund a new bond, on the date of prepayment, with similar scheduled repayment of principal from the time of each such advance payment through the Fee End Date, assuming all scheduled repayments of principal due on or after the Fee End Date are paid on the Fee End Date. (C) Issuer shall not be charged a prepayment fee for advance payments of principal which, when considered on a cumulative basis, do not exceed ten percent of the then outstanding principal amount of the Bond and are directed by Issuer to be held for application on subsequently maturing installment payments in a funds held account which Investor, in its sole discretion, may establish and maintain.

7. **MANNER OF PAYMENT:** Issuer will pay the principal of and interest on this Bond by wire transfer of immediately available Federal funds to such accounts as shall be specified by the Investor, or in such other funds or in such other manner as may be mutually agreed upon by the Investor and the Issuer.

8. **DISBURSEMENTS OF PRINCIPAL:** Disbursement of the Principal Amount of this Bond will be made on the Disbursement Date(s) set forth in the Bond Purchase Agreement.

9. **EVENTS OF DEFAULT:** Events of Default under this Bond are as set forth in the Bond Purchase Agreement.

10. **REMEDIES:** Upon the occurrence of an Event of Default, the Investor may, at its option, exercise any or all of the rights and remedies set forth in the Bond Purchase Agreement. Investor may take any action or proceeding at law or in equity which it deems advisable for the protection of its interests to collect and enforce payment, and the Issuer shall pay all expenses, court costs and reasonable attorneys' fees incurred in connection with or arising out of any default hereunder.

11. **MODIFICATION:** No modification of this Bond, the Bond Purchase Agreement, the Bond Security Documents or any related document shall be enforceable unless in writing and signed by the party against whom enforcement is sought.

12. **FINANCIAL INFORMATION:** Investor, its agents, successors, or assigns may at any time directly or through a credit reporting agency verify or reverify any information, supplied by the Issuer to the Investor in the Issuer's bond application or otherwise provided to the Investor from any source in connection therewith. Investor, its agents, successors and assigns may report Issuer's name and information regarding this Bond and all of Issuer's past and future Bonds

to credit reporting agencies.

13. ASSIGNMENT OF BOND: The Investor may assign or otherwise transfer the Bond to any party including AgriBank, FCB and its successors, whether absolutely or as collateral security and whether in the ordinary course of business or otherwise, without Issuer's consent or approval. This Bond cannot be resold without registration under applicable Federal and State laws unless exemption from such registration requirements are then available.

14. UNAUTHORIZED DISPOSITIONS AND FALSE STATEMENTS: Issuer understands that it is a federal crime punishable by fine, imprisonment, or both to knowingly make any false statements in the Issuer's Bond application as applicable under the provisions of Title 18, United States Code, Section 1014. Issuer also understands that any unauthorized disposition of Collateral or the making of any false statement or report to the Investor in connection with a Bond could result in civil and criminal consequences to the Issuer as applicable under the provisions of Title 18, United States Code, Sections 658 and 1014.

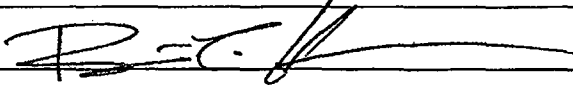
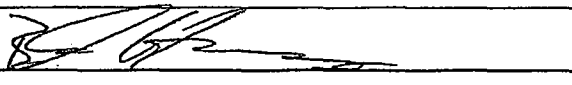
15. PARTIES BOUND: All covenants and agreements in this Bond contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the Investor and the permitted assigns of Issuer whether so expressed or not. As provided in the Bond Purchase Agreement, this Bond is transferable only on the Bond Register of the Issuer, upon joint written notice to the Issuer of such transfer by the holder of this Bond and the transferee. The Issuer may treat the Investor or registered holder as the owner hereof for the purpose of receiving payment and for all other purposes.

16. GOVERNING LAW: This Bond and the Bond Purchase Agreement shall be governed by, construed and enforced in accordance with the internal laws of the State of Minnesota without regard to its conflicts of laws principles.

IN WITNESS WHEREOF, Issuer has executed this Bond as of the Date of Issue set forth above.

ISSUER:

Gordon Paving Co., Inc., an Idaho Corporation
Northwest Sand & Gravel, Inc., an Idaho Corporation
Blackrock Land Holdings.LLC, an Idaho Limited Liability Company

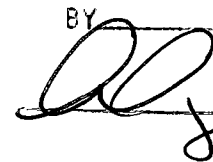
By 	By 
Name: Brian Hansen, in his capacity as Secretary of Gordon Paving Company, Inc., Secretary of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, LLC	Name: Brandon Hansen, in his capacity as Vice President of Gordon Paving Company, Inc., Vice President of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, LLC

Bradley J. Dixon, ISB No. 6167
E-mail: bjdixon@stoel.com
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 JUL -3 PM 3:39

BY  CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

ORDER OF SALE

WHEREAS, AgStar Financial Services, ACA ("Lender"), on the 19th day of June, 2013, recovered a Judgment and Decree of Foreclosure against the Defendants, Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc. and Blackrock Land Holdings, LLC (hereinafter the "Defendants"), and other claimants and parties in interest in and to any part of the Collateral, more particularly described in the Verified Complaint (attached hereto as Exhibit A);

Which said Judgment and Decree of Foreclosure was entered in said District Court on the 19th day of June, 2013, the material part of which is in words and figures following:

1. That final judgment is entered in favor of Plaintiff, AgStar Financial Services, ACA ("Lender"), and against Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc. and Blackrock Land Holdings, LLC (hereinafter the "Defendants");

a. Principal	\$8,176,242.10
b. Interest	\$1,100,140.17
(current to 6/14/13; \$1,943.03 per diem)	
c. Late Charges	\$79,707.15
(\$188.85 per diem)	
d. USDA Guarantee Fees-2011	\$16,463.57
e. USDA Guarantee Fees-2012	<u>\$14,516.18</u>

TOTAL - as of June 14, 2013 accruing interest at the applicable contract rate: \$9,387,069.17

2. Lender is further entitled to a prepayment premium. Once the sale date is scheduled Lender is directed to recalculate the prepayment premium and provide this Court with an updated calculation five (5) days prior to the sale. An Amended Judgment may then be issued if appropriate;

3. That the mortgage and security, being foreclosed in this action, grants Lender a good, sufficient and paramount lien on the Real Property Collateral, more particularly described in the Verified Complaint, securing the payment of the obligations evidenced by the bonds at issue in this lawsuit. The interest of Lender has priority and is superior to any claim, right, title or interest of all Defendants, subject to Defendants' right of redemption;

4. That Lender has a good, sufficient and paramount security in the Personal Property Collateral, as described in the Verified Complaint, securing payment of the obligations evidence by the bonds at issue in this litigation. The interest of Lender has priority and is superior to any claim, right, title or interest of all Defendants, subject to Defendants' right of redemption;

5. That, pursuant to the manner prescribed by Idaho law and according to the rules and practice of this Court, the Sheriff of Twin Falls County, Idaho sell at public auction the Real Property Collateral, and Personal Property Collateral, with proceeds applied

first to the Sheriff's commission and costs of sale with the balance applied to satisfy all amounts due and owing to Lender on the judgment set forth above;

6. That Lender or any other party may become a purchaser at such Sheriff's sale; that following such sale, the Sheriff of Twin Falls County be ordered to execute and deliver a certificate of sale as required by law to the purchaser of the Real Property and his bill of sale to the purchase of the property. Upon the expiration of the period of redemption, said Sheriff is ordered to execute and deliver a deed to the purchaser or other holder of the certificate of sale of the Real Property Collateral, and after the delivery and production of said Sheriff's deed to the Real Property Collateral, the grantee named therein shall have full ownership and possession of the Real Property Collateral;

7. That in the event Lender is the successful purchaser of the Real Property Collateral and Personal Property Collateral at such sale, then Lender shall promptly pay the Sheriff fees, disbursements and commissions on such sale and if any other person or persons is the successful purchaser or purchasers at such sale, then the Sheriff from the proceeds of such sale shall retain his fees, disbursements and commissions on such sale, shall then apply the proceeds toward the payment of the Judgment rendered herein in favor of the Plaintiff and the surplus, if any, to the Clerk of the Court, there to be held by the Clerk of the Court and subject to further order of the Court;

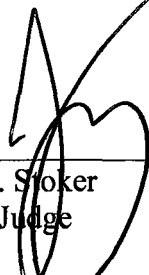
8. That the Defendants and any unknown heirs or devisees of the foregoing named parties who may be deceased, and the unknown owners, claimants and parties in interest claiming to all or any part of the Real Property Collateral or Personal Property Collateral, and each of them, and all persons claiming or to claim from and under them, or any of them, and all persons having liens subject to the mortgage or security by judgment or decree or otherwise upon the Property, or any part or parcel thereof, and their heirs, personal representatives and all persons claiming to have acquired any estate or interest in or to the Real Property Collateral or Personal Property Collateral be, and they hereby are, forever barred and foreclosed of and from all right, title, claim and interest in and to the Real Property Collateral and Personal Property Collateral and in and to every part or parcel thereof, except for such rights of redemption as they may have pursuant thereto, and that said persons, and each of them, be, and they hereby are enjoined and restrained from removing or destroying any of the buildings, the improvements or appurtenances, or

otherwise damaging the Real Property Collateral or Personal Property Collateral prior to redemption from such sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the purchaser or purchasers of the Real Property Collateral and Personal Property Collateral at such sale be let into possession thereof consistent with Idaho law and that any of the parties to this action who may be in possession of the Real Property Collateral or Personal Property Collateral or any part thereof, or any person who, since the recording of the Sheriff's levy on this judgment or recording of the decree, whichever shall first occur, has come into possession, or any part thereof, shall deliver possession thereof to such purchaser or purchasers upon the production of a Sheriff's Certificate of Sale or Deed for the Property or any part thereof, executed by the Sheriff after the Defendants' right of redemption has lapsed.

Jurisdiction of this cause is hereby expressly reserved and retained for the purpose of making such further orders as may be necessary in order to carry this Decree of Foreclosure and Judgment into effect and correct any mathematical error, to grant any accrued credits, or for the purpose of making such further orders as may be necessary or desirable.

DATED this 19th day of June, 2013.



Randy J. Stoker
District Judge

NOW, THEREFORE, you, the said Sheriff of Twin Falls County, Idaho, are commanded and required to proceed to Notice of Sale and to sell the Property, to apply the proceeds of such sale to the satisfaction of said Judgment and Decree of Foreclosure with interest thereon and costs, together with your fees, and to make and file your return of such sale to the Clerk of the District Court within sixty (60) days from the date of your receipt hereof, and to do all things according to the terms and requirements of said Judgment and Decree of Foreclosure and the provisions of the statutes in such cases made and provided.

WITNESS the Honorable Randy J. Stoker, Judge of the District Court of the Fifth
Judicial District of the State of Idaho, in and for the County of Twin Falls, and the seal of said
Court this 3 day of June, 2013.

CLERK OF THE COURT

By: 
Deputy Clerk

CLERK'S CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 3 day of ~~June~~ ^{July}, 2013, I served a true and correct copy of the foregoing **ORDER OF SALE** on the following, by US Mail, postage prepaid:

Matthew C. Darrington, Esq.
ANTHON DARRINGTON PLLC
P.O. Box 536
Rupert, ID 83350
Facsimile: (208) 260-5281
Email: matt@minicassialaw.com

Attorneys for Defendants:
Northwest Sand & Gravel, Inc.
Gordon Paving Company, Inc.
Blackrock Land Holdings, LLC

Bradley J. Dixon
STOEL RIVES LLP
101 S. Capitol Blvd., Ste. 1900
Boise, Idaho 83702

Attorney for Plaintiff


Clerk of the Court

Bradley J. Dixon, ISB No. 6167
E-mail: bjdixon@stoel.com
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

SEP 30 2013

By _____ 11:30 AM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**ORDER GRANTING MEMORANDUM
OF COSTS AND FEES**

This matter having come before the Court on Plaintiff's, AgStar Financial Services ACA, Memorandum of Costs and Attorney Fees and the supporting Affidavit of Bradley J. Dixon, no objection having been presented to the Court and good cause appearing, therefore,

IT IS HEREBY ORDERED that costs are awarded to the Plaintiff in the amount of \$20,593.01 and fees are awarded to Plaintiff in the amount of \$39,030.50.

DATED: September 30, 2013.



Judge Randy Stoker

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30 day of September, 2013, I served a true and correct copy of the foregoing **ORDER GRANTING MEMORANDUM OF COSTS AND FEES** in the above-entitled matter as follows:

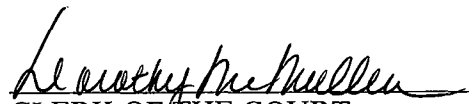
Matthew C. Darrington, Esq.
ANTHON DARRINGTON PLLC
P.O. Box 536
Rupert, ID 83350

Attorneys for Defendants:
Northwest Sand & Gravel, Inc.
Gordon Paving Company, Inc.
Blackrock Land Holdings, LLC

Bradley J. Dixon
Stoel Rives LLP
101 S. Capitol Blvd
Suite 1900
Boise, ID 83702

Attorneys for AgStar Financial Services, ACA

By:


CLERK OF THE COURT

Bradley J. Dixon, ISB No. 6167
Email: bjdixon@stoel.com
Kersti H. Kennedy, ISB No. 9064
Email: khkennedy@stoel.com
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
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Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2013 DEC -3 AM 11:15

BY SP CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

CERTIFICATE OF SALE

TWIN FALLS COUNTY

Recorded for:

TWIN FALLS COUNTY SHER
1:21:54 PM 12-02-2013

2013-024538

No. Pages: 11 Fee: \$ 40.00
KRISTINA GLASCOCK
County Clerk
Deputy: BHUNTER

Under and by virtue of an Order of Sale issued in the above entitled action on July 3,
2013 and a Writ of Execution issued in the above entitled action on July 3, 2013 and directed to
me, the Sheriff of the County of Twin Falls, Idaho, whereby I was commanded to satisfy the
Judgment and Decree of Foreclosure entered in the above entitled action on June 19, 2013 out of

the real and personal property described in the Order of Sale at **Exhibit A**, and according to law, apply the proceeds of the sale of the property in satisfaction of the Judgment and Decree of Foreclosure entered in this action.

NOW, THEREFORE, I do hereby certify I sold the property described in Exhibit A to the Order of Sale as described below and in the following amounts on the 21st day of November, 2013 at, or shortly after, 2:00 p.m. of that day at public auction according to law after due and legal notice given, on the steps of the Twin Falls County Courthouse in Twin Falls, Twin Falls County, Idaho:

1. **SALE No. 1** - PARCELS 5, 6A and 6B as described in Exhibit A were sold for a credit bid in the amount of \$1,067,615.00 to AgStar Financial Services, ACA.
2. **SALE No. 2** - PARCEL 1 as described in Exhibit A was sold for a credit bid in the amount of \$1,325,299.00 to AgStar Financial Services, ACA.
3. **SALE No. 3** - PARCELS 8, 10 (A), 10 (B), 10 (C) and 10 (D) as described in Exhibit A were sold for a credit bid of \$1,607,086.00 to AgStar Financial Services, ACA.
4. **SALE No. 4** - The Cassia County Parcel as described in Exhibit A was sold for a credit bid of \$600,000.00 to AgStar Financial Services, ACA.
5. **SALE No. 5** - PARCELS 2, 3 & 4 as described in Exhibit A were sold for a credit bid of \$2,600,000.00 to AgStar Financial Services, ACA.

The above described property is subject to redemption within one (1) year after sale if the real property sold consisted of a tract of land of more than twenty (20) acres, and within six (6) months after the sale of the real property sold consisted of a tract of land of twenty (20) acres or less, pursuant to the statute in such case made and provided.

WITNESS my hand this 27 day of November, 2013.

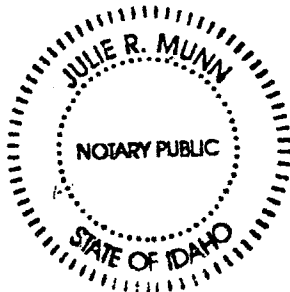
TOM CARTER
Sheriff of Twin Falls County

By: Tom Carter

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 27 day of November, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared TOM CARTER, known or identified to me to be the Sheriff of Twin Falls County, State of Idaho that executed said instrument, and acknowledged to me that such Sheriff of Twin Falls County, State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Julie R. Munn
Notary Public for Idaho Twin Falls
My commission expires: 11/26/16

PARCEL 1

Township 11 South, Range 18 East Boise Meridian, Twin Falls County, Idaho

Section 25: That part of the SW $\frac{1}{4}$ situated South of the Twin Falls Canal Co. Ltd., "High Line Canal" and West of Rock Creek;

EXCEPTING the following described parcel:

BEGINNING at the Southwest corner of Section 25, the 'TRUE POINT' OF BEGINNING;

Thence North 424.12 feet along the Westerly boundary of said SW $\frac{1}{4}$;

Thence East 200.00 feet;

Thence South 3°20'19" East 428.71 feet to the Southerly boundary of said SW $\frac{1}{4}$;

Thence North 89°01'01" West 225.00 feet along the Southerly boundary of the SW $\frac{1}{4}$ to the True Point of Beginning.

AND EXCEPT that portion thereof more particularly described as follows:

Beginning at intersection of centerline of the High Line Canal and East right-of-way line of the present road, which point is approximately 668 feet North and 25 feet East from the Southwest corner of said Section;

Thence Northeasterly along the center line of said High Line Canal 14 feet, more or less, to a point which point bears South 89°17' East 35 feet from Road Station 363+47;

Thence South 0°43' West along a line parallel to and 35 feet Easterly from the centerline of said road 153 feet, more or less, to a point;

Thence South 5°59' West 100.5 feet more or less, to a point on the East right-of-way line of the present road;

THENCE North along said East right of way line 243 feet, more or less, to the Point of Beginning.

AND ALSO EXCEPT;

An irregular parcel of land on the Easterly side of the centerline of road as surveyed and shown on the official plat of Hansen-Rock Creek S-220(4) road survey on file in the office of Department of Public Works of the State of Idaho, and lying in a portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section, described as follows;

Beginning at a point on the Easterly right of way line of the present road, which point is approximately 925 feet North and 25 feet East from the Southwest corner of said Section, which point of beginning bears South 89°17' East 25 feet from road Station 361+00;

Thence South 5°00' East 100.5 feet, more or less, to a point;

Thence South 0°43' West along a line parallel to and 35 feet East from the centerline of road, 147 feet more or less to a point on the centerline of the High Line Canal;

Thence Southwesterly along the centerline of said canal 14 feet, more or less, to a point on the Easterly right-of-way line of the present road;

Thence North along the right-of-way line of the present road 257 feet, more or less, to the Point of Beginning.

SUBJECT TO: Twin Falls County Highway Right of Way

PARCELS 2, 3 & 4

A tract of land located in the Southwest Quarter and the Northwest Quarter of the Southeast Quarter of Section 7 and the Northwest Quarter of Section 18, Township 10 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho, more particularly described as follows;

Beginning at the Northwest corner of said SW1/4 Section 7;

Thence South 87°54'52" East a distance of 543.40 feet along the Northerly boundary of said SW1/4 to the True Point of Beginning;

Thence South 87°54'52" East along said Northerly boundary a distance of 849.17 feet to the Westerly edge of the rimrock of Rock Creek Canyon;

Thence Southerly along said Westerly rimrock the following courses and distances South 09°45'41" West a distance of 86.52 feet;

Thence South 14°23'00" West a distance of 97.35 feet;

Thence South 01°48'50" West a distance of 13.00 feet;

Thence South 61°59'10" West a distance of 25.00 feet;

Thence South 15°21'24" West a distance of 60.77 feet;

Thence South 25°12'16" East a distance of 45.00 feet;

Thence South 46°29'17" East a distance of 27.92 feet;

Thence South 16°28'44" West a distance of 64.42 feet

Thence South 27°24'30" East a distance of 29.53 feet

Thence South 29°33'58" East a distance of 38.62 feet;

Thence South 32°17'58" East a distance of 62.27 feet;

Thence South 16°50'57" East a distance of 67.45 feet;

Thence South 01°32'15" West a distance of 31.43 feet;

Thence South 22°23'46" East a distance of 33.20 feet;

Thence South 08°33'39" West a distance of 54.74 feet;

Thence South 04°45'32" East a distance of 86.83 feet;

Thence South 14°19'18" West a distance of 59.67 feet;

Thence South 87°24'41" East a distance of 16.37 feet;

Thence North 29°30'04" East a distance of 142.02 feet;

Thence South 47°03'18" East a distance of 97.64 feet;

Thence South 75°38'49" East a distance of 35.04 feet;

Thence South 54°50'04" East a distance of 66.71 feet;

Thence South 84°33'14" East a distance of 128.06 feet;

Thence South 81°52'10" East a distance of 152.91 feet;

Thence North 54°08'32" East a distance of 238.17 feet;

Thence South 45°21'15" East a distance of 26.36 feet;

Thence South 32°50'59" West a distance of 115.20 feet;

Thence South 20°57'01" West a distance of 112.56 feet;

Thence South 09°25'30" West a distance of 192.24 feet;

Thence South 01°36'52" West a distance of 71.91 feet;

Thence South 04°55'04" West a distance of 128.65 feet to the Southerly boundary of said NW1/4 SE1/4 Section 7;

Thence North 88°55'25" West a distance of 168.46 feet along said Southerly boundary to the Northeast corner of the SE1/4 SW1/4 of said Section 7;

Thence South 00°29'21" West a distance of 1,042.17 feet along the Easterly boundary of said SE1/4

SW1/4;

Thence North 89° 59'06" West a distance of 323.85 feet;

Thence South 00°28'04" West a distance of 403.73 feet to the Northerly right of way boundary of U.S. Highway 93 /30;

Thence North 89°41'24" West a distance of 1,515.78 feet along said Northerly right of way boundary to the Westerly boundary of said Section 18;

Thence North 00°17'19" East a distance of 140.75 feet along the Westerly boundary of said Section 18 to the corner common to Sections 7, 18 and 12;

Thence North 00°16'30" East a distance of 1,094.85 feet;

Thence South 87°59'34" East a distance of 542.63 feet;

Thence North 00°18'08" East a distance of 1,566.09 feet to the True Point of Beginning.

EXCEPTING THEREFROM; Section 18, Township 10 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho, more particularly described as follows; a parcel of land located in the NW1/4 SE1/4

PARCEL 5

Township 9 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho

Section 13: A parcel of land located in the the NW¼ of said Section 13, more particularly described as follows:

Commencing at the Northwest corner of Section 13, said point lies North 89°50'00" West 2604.03 feet from the North quarter corner of Section 13;

Thence South 89°50'00" East, 438.56 feet to the Real Point of Beginning;

Thence South 89°50'00" East, 1993.12 feet;

Thence South 14°34'53" West, 221.74 feet;

Thence North 88°18'33" West, 133.01 feet;

Thence South 79°20'17" West, 260.92 feet;

Thence South 83°34'47" West, 105.91 feet;

Thence South 78°42'40" West, 165.35 feet;

Thence south 83°14'49" West, 193.47 feet;

Thence North 75°35'08" West, 650.46 feet;

Thence North 72°44'20" West, 257.23 feet;

Thence North 66°17'17" West, 232.39 feet to the Real Point of Beginning.

SUBJECT TO: Highway Right of Way

PARCEL 6A

Township 9 South, Range 15 East Boise Meridian, Twin Falls County, Idaho

Section 12: a tract of land located in the S¼ more particularly described as follows;

Beginning at the South quarter corner of said Section 12;

Thence North 89°26'30" West a distance of 2172.02 feet along the Southerly boundary of the SW¼ of said Section 12 to the Easterly boundary of the County Road;

Thence North 62°38'53" West a distance of 118.81 feet along the Easterly boundary of said County Road;

Thence Northwesterly 391.42 feet on the arc of a curve to the right with a radius of 256.43 feet, a central angle of 87°27'27"

and a chord which bears North 18°55'09" West a distance of 354.51 feet to a point of curvature on said East right-of-way line;

Thence North 24°48'34" East a distance of 59.62 feet along said Easterly right-of-way boundary;
Thence North 65°11'26" West a distance of 5.00 feet along said Easterly right-of-way boundary;
Thence North 24°48'34" East a distance of 33.05 feet along said Easterly right-of-way boundary;

Thence South 64°36'45" East a distance of 32.33 feet;
Thence North 52°40'52" East a distance of 58.39 feet;
Thence North 40°31'43" East a distance of 83.27 feet;
Thence North 50°26'48" East a distance of 30.00 feet;
Thence North 83°19'26" East a distance of 81.70 feet;
Thence South 88°26'48" East a distance of 135.39 feet;

Thence South 85°35'28" East a distance of 122.43 feet;
Thence South 83°52'11" East a distance of 118.90 feet;
Thence South 81°48'43" East a distance of 428.32 feet;
Thence South 80°11'24" East a distance of 1351.11;
Thence North 86°27'27" East a distance of 461.25 feet;
Thence South 15°01'25" West a distance of 337.72 feet to a point on the Southerly boundary of said Section 12;

Thence North 89°24'28" West a distance 379.76 feet along the Southerly boundary of said Section to the True Point of Beginning.

PARCEL 6B

AND ALSO INCLUDING an easement for the purpose of ingress, egress and utilities over a strip of ground 60 feet in width located in the S½ of Section 12, Township 9 South, Range 15 East Boise Meridian, Twin Falls county Idaho, more particularly described as follows:

Beginning at the South quarter corner of said Section 12;

Thence South 89°24'28" East a distance of 379.76 feet along the Southerly boundary of the SE¼ of said Section 12;
Thence North 15°01'25" East a distance of 274.43 feet to the True Point of Beginning;
Thence South 86°27'27" West a distance of 448.12 feet;
Thence North 80°11'24" West a distance of 1357.28 feet;
Thence North 81°48'43" West a distance of 426.39 feet;
Thence North 83°52'11" West a distance of 116.93 feet;
Thence North 85°35'28" West a distance of 120.03 feet;
Thence North 88°26'48" West a distance of 129.58;
Thence South 83°19'26" West a distance of 59.68 feet;
Thence South 50°26'48" West a distance of 7.09 feet;
Thence South 40°31'43" West a distance of 84.45 feet;
Thence South 52°40'52" West a distance of 101.33 feet;
Thence South 88°00'08" West a distance of 70.90 feet;

Thence North 24°48'34" East a distance of 59.62 feet;
Thence North 65°11'26" West a distance of 5.00 feet;
Thence North 24°48'34" East a distance of 33.05 feet;
Thence South 64°36'45" East a distance of 32.33 feet;
Thence North 52°40'52" East a distance of 58.39 feet;
Thence North 40°31'43" East a distance of 83.27 feet;
Thence North 50°26'48" East a distance of 30.00 feet;
Thence North 83°19'26" East a distance of 81.70 feet;

Thence south 88°26'48" East a distance of 135.39 feet;
Thence South 85°35'28" East a distance of 122.43 feet;
Thence South 83°52'11" East a distance of 118.90 feet;

Thence South $81^{\circ}48'43''$ East a distance of 428.32 feet;
Thence South $80^{\circ}11'24''$ East a distance of 1351.11 feet;
Thence North $86^{\circ}27'27''$ East a distance of 461.25 feet;
Thence South $15^{\circ}01'25''$ West a distance of 63.29 feet to the True Point of Beginning.

PARCEL 8

Township 12 South, Range 18 East Boise Meridian, Twin Falls County, Idaho
Section 13: A parcel of land described on Reclamation Plan No. RP-849 and more particularly described as follows:

Starting at a point located in the Southeast corner of the $W\frac{1}{2}SE\frac{1}{4}$ as the True Point of Beginning;

Thence North parallel to the Section line 300 feet;
Thence West parallel to the Section line 1452 feet;
Thence parallel to the Section line 300 feet;
Thence East along the Southerly Section line 1,452 feet to the True Point of Beginning, as shown on Reclamation Plan No. RP-489.

PARCEL 10 (A)

Township 11 South, Range 18 East Boise Meridian, Twin Falls County, Idaho
Section 35: A parcel of land in the $SE\frac{1}{4}NE\frac{1}{4}$ more particularly described as follows:
Beginning at a point on the East Section line of Section 35 located approximately 1,889.51 feet South of the Northeast corner of said Section 35:

Thence North $82^{\circ}45'$ West approximately 513.79 feet to the Real Point of Beginning;
thence Northwesterly along a 1116.28 foot radius curve right having a long chord of 297.52 feet bearing North $75^{\circ}05'39''$ West approximately 298.32 feet to a point of tangency;

Thence North $67^{\circ}26'$ West approximately 197.68 feet;
Thence North $02^{\circ}07'36''$ West approximately 294.26 feet;
Thence South $39^{\circ}25'40''$ East approximately 55.25 feet;
Thence South $46^{\circ}02'54''$ East approximately 91.57 feet;
Thence South $48^{\circ}46'15''$ East approximately 157.60 feet;
Thence South $47^{\circ}15'48''$ East approximately 298.78 feet;
Thence South $51^{\circ}19'59''$ East approximately 53.76 feet to the Real Point of Beginning.

PARCEL 10 (B)

Township 11 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho
Section 35: A parcel of land in the $NW\frac{1}{4}NE\frac{1}{4}$ and the $NE\frac{1}{4}NE\frac{1}{4}$ and the $SE\frac{1}{4}NE\frac{1}{4}$ and being more particularly described as follows:

Commencing at the Northeast corner of Section 35;
Thence a distance of 1500.00 feet on a bearing of South along the East boundary of said Section 35; thence a distance of 803.92 feet on a bearing of North $89^{\circ}30'34''$ West to the Real Point of Beginning;
Thence from this Real Point of Beginning a distance of 1363.51 feet on a bearing of North $16^{\circ}14'53''$ West to the Southerly right of way of the Twin Falls Canal Company's High Line Canal;
Thence along the said Southerly right of way of the Twin Falls Canal Company's High Line Canal the following courses and distances;
North $58^{\circ}59'11''$ West 107.75 feet;
North $49^{\circ}07'49''$ West 83.96 feet;
North $39^{\circ}22'26''$ West 108.15 feet to the North boundary of said Section 35;
Thence a distance of 345.60 feet on a bearing of North $89^{\circ}35'57''$ West along the North boundary of said Section 35;

Thence along the centerline of an existing irrigation ditch the following courses and distances:

South 00°12'00" West 487.62 feet;
South 13°16'55" East 32.74 feet;
South 35°35'01" East 43.54 feet;
South 46°04'51" East 161.11 feet;
South 48°27'50" East 79.80 feet;
South 50°46'22" East 269.87 feet;
South 39°08'16" East 32.21 feet;
South 33°22'27" East 332.39 feet;
South 34°56'08 East 168.68 feet;
South 39°25'40 East 132.39 feet;
South 46°02'54" East 91.57 feet;
South 48°46'15" East 70.21 feet;

Thence a distance of 50.00 feet on a bearing of North 41°13'45" East to the Real Point of Beginning.

PARCEL 10 (C)

Township 11 South, Range 18 East Boise Meridian, Twin Falls County, Idaho

Section 35: A parcel of land in the SE¼NE¼ more particularly described as follows:

Commencing at the Northeast corner of Section 35;

Thence a distance of 1,500.00 feet on a bearing of South along the East boundary of said Section 35 to the Real Point of Beginning;

Thence from the Real Point of Beginning a distance of 803.92 feet on a bearing of North 89°30'34" West;

Thence a distance of 50.00 feet on a bearing of South 41°13'45" West

Thence along the centerline of an existing irrigation ditch the following courses and distances;

South 48°46'15" East 87.39 feet;

South 47°15'48" East 298.78 feet;

South 51°19'59 East 144.13 feet

South 61°52'29 East 128.44 feet;

Thence South 82°45'09 East 299.86 feet;

South 89°30'34" East 28.40 feet to the East boundary of said Section 35;

Thence a distance of 479.75 feet on a bearing of North long the East boundary of said Section 35 to the Real Point of Beginning.

EXCEPT

A Parcel of land in the SE¼NE¼ Section 35, Township 11 South, Range 18 E., B.M., Twin Falls County, Idaho, and being more particularly described as follows:

Commencing at the Northeast corner of Section 35;

Thence South a distance of 1889.33 feet along the East boundary of said Section 35 to the North boundary of a 60-foot-wide public road right of way and the Real Point of Beginning;

Thence from the Real Point of Beginning and continuing along the said East boundary of Section 35 South a distance of 60.48 feet to the South boundary of a 60-foot-wide public road right of way;

Thence along the South boundary of a 60-foot-wide public road right of way North 82°45'00" West a distance of 411.00 feet to the centerline of an irrigation ditch that existed in 1976;

Thence along the centerline of an irrigation ditch that existed in 1976 the following courses and distances:

North 61°52'59" West 35.68 feet;

North 51°19'59" West 90.94 feet to the North boundary of a 60-foot-wide public road right of way;

Thence along the North boundary of a 60-foot-wide public road right of way on a curve to the left having a central angle of 00°50'03"; a radius of 1115.92 feet; a tangent of 8.12 feet; and arc length of 16.25 feet and a long chord of 16.25 feet on a bearing of South 82°19'58" East;

Thence continuing along the North boundary of a 60-foot-wide public road right of way South 82°45'00" East a distance of 498.02 feet to the Real Point of Beginning.

SUBJECT TO a right of way 25 feet in width for the purpose of constructing and maintaining a public road along the East boundary thereof.

AND EXCEPT

A parcel of land in the SE¼NE¼, Section 35, Township 11 South, Range 18 E., B.M., Twin Falls County, Idaho, and being

more particularly described as follows:

Commencing at the Northeast corner of Section 35;

Thence South a distance of 1949.81 feet along the East boundary of said Section 35 to the Real Point of Beginning;

Thence from the Real Point of Beginning and continuing along the East boundary of Section 35 a distance of 29.94 feet;

Thence along the centerline of an irrigation ditch that existed in 1976 the following courses and distances;

North 89°30'34" West 28.40 feet;

North 82°45'09" West 299.86 feet;

North 61°52'29" West 92.76 feet to the South boundary of a 60-foot-wide public road right of way;

Thence along the South boundary of a 60-foot-wide public road right of way South 82°45'00" East a distance of 411.00 feet to the Real Point of Beginning.

SUBJECT TO a right of way 25 feet in width for the purpose of constructing and maintaining a public road along the East boundary thereof.

AND ALSO EXCEPT

A Parcel of land in the SE¼NE¼ Section 35, Township 11 South, Range 18 E., B.M., being 30 feet in width on each side of the following described centerline;

Beginning at a point on the East section line of Section 35 located approximately 1919.57 feet South of the Northeast corner of said Section 35;

Thence North 82°45' West approximately 468.4 feet to the centerline of an existing ditch;

Thence North 82°45' West approximately 33.44 feet to a point of curvature;

Thence Northwesterly along a 5° curve right having a central angle of 15°19' approximately 306.3 feet to a point of tangency;

Thence North 67°26' West approximately 222.6 feet to a point of curvature;

Thence Northwesterly along a 4° curve left having a central angle of 13°16'

approximately 331.7 feet to a point on curve, said point being on the West line of the SE¼NE¼ of said Section 35 located approximately 1677.63 feet North 51°45'16" West of the East quarter corner of said Section 35.

PARCEL 10 (D)

Township 11 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho

Section 35: A parcel of land in the NE¼NE¼ and the SE¼NE¼ and being more particularly described as follows:

Commencing at the Northeast corner of Section 35;

Thence a distance of 238.00 feet on a bearing of 89°35'37" West along the North boundary of said Section 35 to the Real Point of Beginning;

Thence from this Real Point of Beginning and continuing along the North boundary of Section 35 a distance of 343.81 feet on a bearing of North 89°35'37" West to the Southerly right of way of the Twin Falls Canal Company's High Line Canal;

Thence along the said Southerly right of way of the Twin Falls Canal Company's High Line Canal the following courses and distances;

South 41°39'03" West 160.59 feet;

South 58°00'40" West 143.60 feet;

South 71°23'46" West 80.59 feet;

South 81°53'16" West 50.72 feet;

North 87°08'07" West 124.86 feet;

North 74°43'29" West 126.09 feet;

North 58°59'11" West 2.50 feet;

Thence a distance of 1363.51 feet on a bearing of South 16°14'53" East;

Thence a distance of 803.92 feet on a bearing of South 89°30'34" East to the East boundary of said Section 35;

Thence along the said East boundary of Section 35 a distance of 1024.00 feet on a bearing of North;

Thence a distance of 238.00 feet on a bearing of North 89°35'37" West;

Thence a distance of 476.0 feet on a bearing of North to the Real Point of Beginning.

The land referred to is described as follows:

TOWNSHIP 12 SOUTH, RANGE 22 EAST, BOISE MERIDIAN, CASSIA COUNTY, IDAHO

Section 21: Part of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and all of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and part of the NE $\frac{1}{4}$ SW $\frac{1}{4}$, more particularly described as follows:

Beginning at the East 1/4 Section corner of said Section 21, said corner marked by a 5/8" rebar with a 3" cap on top of a US GLO iron pipe with brass cap which shall be the Point of Beginning:

Thence South 00°26'08" East along the East line of Section 21 for a distance of 30.00 feet;

Thence North 88°36'53" West (N 88°31'13" W, rec.) for a distance of 27.59 feet to a 1/2" rebar;

Thence North 88°36'53" West (N 88°31'13" W, rec.) for a distance of 173.81 feet to a 1/2" rebar;

Thence South 01°58'20" West (S 2°04'00" W, rec.) for a distance of 223.05 feet to a 1/2" rebar;

Thence South 31°11'36" West (S 31°25'17" W, rec.) for a distance of 151.12 feet (150.58', rec.) to a 1/2" rebar;

Thence South 40°09'49" East (S 40°03'36" E, rec.) for a distance of 186.16 feet to a 1/2" rebar on the West Right-of-Way of State

Highway 27;

Thence South 33°39'41" West along said highway Right-of-Way for a distance of 957.75 feet to a concrete Right-of-Way marker on the South line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Thence North 89°25'23" West along the South line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ for a distance of 1946.35 feet to a 5/8" rebar at the SW corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Thence North 89°25'23" West for a distance of 25.36 feet to a 1/2" rebar;

Thence North 00°20'27" West for a distance of 1323.00 feet to a 1/2" rebar on the North line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$;

Thence South 89°26'30" East along the North line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ for a distance of 22.58 feet to the Center 1/4 corner of Section 21;

Thence South 89°26'30" East along the NE $\frac{1}{4}$ SE $\frac{1}{4}$ for a distance of 2654.88 feet to the Point of Beginning.

ALL IN CASSIA COUNTY, STATE OF IDAHO

Bradley J. Dixon, ISB No. 6167
Email: bjdixon@stoel.com
Kersti H. Kennedy, ISB No. 9064
Email: khkennedy@stoel.com
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 JAN -3 PM 4:15

BY

CLERK

DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**ORDER ON MOTION FOR WRIT OF
ASSISTANCE**

This matter having come before the Court on Plaintiff's, AgStar Financial Services
ACA's, Motion for Writ of Assistance and the supporting Memorandum and Affidavit of Kersti
H. Kennedy, and good cause appearing, therefore,

IT IS HEREBY ORDERED that the Defendants will pay to Plaintiff AgStar
\$9500.00/month for the rental of the building on the foreclosed property, due on the first of each

ORDER ON MOTION FOR WRIT OF ASSISTANCE - 1

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month; the first payment, however, will be due January 6, 2014. On January 6, 2014, \$19,000.00 is due to AgStar for December 2013 and January 2014 rent. Defendants will make arrangements with Plaintiff to allow periodic inspections of the property to include the interior of commercial spaces. Defendants also agree that should they fail to maintain insurance on the property, AgStar will have the right to demand a greater monthly rental rate for the building. AgStar also has the right to require that the Defendants provide proof of insurance in good standing on the building at any time.

The Defendants will also pay to AgStar \$0.75/per ton as royalties for any aggregate removed from any of the foreclosed gravel pits, due on the first of each month. The Defendants will also provide monthly reports on the aggregate extracted and royalties due on the first of each month. On January 6, 2014, the first report on aggregate royalties is due, as well as the first payment for aggregate extracted for which no royalties have yet been paid to AgStar.

DATED: January 3, 2014.



Judge Randy Stoker

ORDER ON MOTION FOR WRIT OF ASSISTANCE - 2

75287381.1 0047071-00001

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of January, 2014, I served a true and correct copy of the foregoing **ORDER ON MOTION FOR WRIT OF ASSISTANCE** in the above-entitled matter as follows:

Brent T. Robinson, Esq.
ROBINSON & TRIBE
P.O. Box 396
Rupert, ID 83350
Facsimile: (208) 436-6804
Email: BTR@idlawfirm.com

Attorneys for Defendants:
Northwest Sand & Gravel, Inc.
Gordon Paving Company, Inc.
Blackrock Land Holdings, LLC

Bradley J. Dixon
Stoel Rives LLP
101 S. Capitol Blvd
Suite 1900
Boise, ID 83702

Attorneys for AgStar Financial Services, ACA

By:


CLERK OF THE COURT

ORDER ON MOTION FOR WRIT OF ASSISTANCE - 3

75287381.1 0047071-00001

Bradley J. Dixon, ISB No. 6167
Email: bjdixon@stoel.com
 Kersti H. Kennedy, ISB No. 9064
Email: khkennedy@stoel.com
STOEL RIVES LLP
 101 S Capitol Boulevard, Suite 1900
 Boise, ID 83702
 Telephone: (208) 389-9000
 Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
Fifth Judicial District
 County of Twin Falls - State of Idaho

FEB 13 2014

By 8:00 AM
 Clerk
 Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

**NORTHWEST SAND & GRAVEL, INC.,
 an Idaho corporation; GORDON PAVING
 COMPANY, INC., an Idaho Corporation;
 BLACKROCK LAND HOLDINGS, LLC,
 an Idaho limited liability company; TOWN
 AND COUNTRY BANK, INC.; and FIRE
 SERVICE OF IDAHO, INC.,**

Defendants.

Case No. CV 12-2731

**SECOND AMENDED ORDER ON
 MOTION FOR WRIT OF ASSISTANCE**

This matter having come before the Court on Plaintiff's, AgStar Financial Services
 ACA's, Motion for Writ of Assistance and its supporting pleadings, and good cause appearing,
 therefore,

SECOND AMENDED ORDER ON MOTION FOR WRIT OF ASSISTANCE - 1

75545837.1 0047071-00001

IT IS HEREBY ORDERED that Northwest Sand and Gravel Acquisition, LLC is entitled to immediate possession of the foreclosed property, including both the office property and gravel pits.¹

The parties may attempt to negotiate an agreement regarding the removal of, and royalties for, the gravel, and may seek the guidance of the Court should an agreement not be reached.

This order supersedes the previous stipulated order on Motion for Writ of Assistance entered January 3, 2014.

DATED: February 13, 2014.



Judge Randy Stoker

¹ Plaintiff AgStar Financial Services, ACA, has assigned its right to the real property, as granted by the Certificate of Sale dated December 23, 2013, to Northwest Sand and Gravel Acquisition, LLC.

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of February, 2014, I served a true and correct copy of the foregoing **AMENDED ORDER ON MOTION FOR WRIT OF ASSISTANCE** in the above-entitled matter as follows:

Brent T. Robinson, Esq.
Reed Cotton, Esq.
ROBINSON & TRIBE
P.O. Box 396
Rupert, ID 83350
Facsimile: (208) 436-6804
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Attorneys for Defendants:
Northwest Sand & Gravel, Inc.
Gordon Paving Company, Inc.
Blackrock Land Holdings, LLC

FAX

Bradley J. Dixon
Stoel Rives LLP
101 S. Capitol Blvd
Suite 1900
Boise, ID 83702

FAX

Attorneys for AgStar Financial Services, ACA

By:

Learachy McMillen
CLERK OF THE COURT

SECOND AMENDED ORDER ON MOTION FOR WRIT OF ASSISTANCE - 3

75545837.1 0047071-00001

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

APR 14 2014

By 2:30 PM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

vs.

NORTHWEST SAND AND GRAVEL,
INC, et. al.

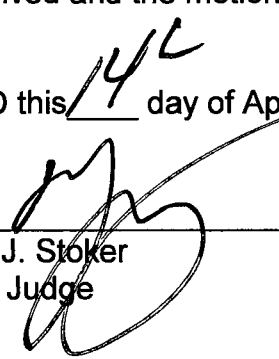
Defendants.

Case No. CV 2012-2731

**ORDER RE POSSESSION OF
PROPERTY**

At the hearing on February 7, 2014 the Court specifically directed Mr. Dixon to prepare an Order granting Plaintiff possession of the office property and gravel pits and rescinding the order regarding removal of gravel and any royalties relating thereto. Defendant's counsel specifically stated that defendants had no objection to such an order. Thus the issues raised in Defendant's motion to amend the second amended order for writ of assistance were previously resolved and the motion is DENIED.

DATED this 14th day of April, 2014.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE


I hereby certify that on the 14 day of April 2014, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Brent Robinson
P.O. Box 396
Rupert, Idaho 83350

☒ U.S. Mail
☐ Hand delivered
☐ Faxed
☐ Court Folder

Kertsti Kennedy
Stoel Reeves
101 S. Capitol Blvd. Suite 1900
Boise, Idaho 83702

☒ U.S. Mail
☐ Hand delivered
☐ Faxed
☐ Court Folder


Clerk

Attorneys for Plaintiff


JUN 25 2014

By _____ 1:00 P.M.
Clerk
Deputy Clerk

217

1. Defendants waive their request for possession of the property. Defendants agree that paying royalties will not grant them possession of the property on which the pits lie.
2. Defendants will have a license to remove aggregate at all pits located on the foreclosed property for \$1.50 per ton on a non-exclusive basis until the redemptive period expires.
3. Payment will be due on the first day of the month for the prior month's extraction. At this time, Defendants will also submit copies of all scale receipts for gravel extracted within the past month.
4. Defendants will give Plaintiff 24 hours' written notice before they remove aggregate, and if possible, will report on how much aggregate they anticipate removing.
5. Defendants must provide Plaintiff written confirmation of insurance regarding the removal activities before removal begins, and at any time when demanded by the Plaintiff.

DATED: June 25, 2014.



Judge Randy Stokes

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of June, 2014, I served a true and correct copy of the foregoing **ORDER RESOLVING ROYALTIES ISSUE** in the above-entitled matter as follows:

Brent T. Robinson, Esq.
ROBINSON & TRIBE
P.O. Box 396
Rupert, ID 83350
Facsimile: (208) 436-6804
Email: BTR@idlawfirm.com

*Attorneys for Defendants:
Northwest Sand & Gravel, Inc.
Gordon Paving Company, Inc.
Blackrock Land Holdings, LLC*

Bradley J. Dixon
Stoel Rives LLP
101 S. Capitol Blvd
Suite 1900
Boise, ID 83702

Attorneys for AgStar Financial Services, ACA

By: 
CLERK OF THE COURT

AUG 28 2014

By _____ 9:45 AM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

vs.

GORDON PAVING COMPANY, INC., et
al.,

Defendants.

Case No. CV 2012-2731

**MEMORANDUM OPINION RE
PLAINTIFF'S MOTION FOR
DEFICIENCY JUDGMENT**

Bradley J. Dixon and Kersti H. Kennedy for Plaintiff.

Brent T. Robinson and W. Reed Cotten for Defendants.

INTRODUCTION

On June 19, 2013, Plaintiff ("AgStar") obtained a judgment against Defendants (collectively, "Gordon") in the amount of \$9,387,069.17.¹ The Court also entered an order that awarded Plaintiff an additional sum for a "prepayment penalty" to be calculated prior to any judicial sale. That prepayment penalty amounted to \$366,648.00 and was determined on or about November 14, 2013 when AgStar's representative filed an affidavit with the Court calculating that amount, as directed in the aforementioned

¹ Gordon is referenced in this case as representing the collective Defendants because the other Defendant entities generally did business under this name.

order. In an order entered on September 30, 2013 the Court also awarded \$59,623.51 in attorney fees and costs post judgment. No amended judgment was ever entered.

The judgment foreclosed Gordon's interest in five gravel pits (four in Twin Falls County and one in Cassia County), a commercial site in Twin Falls, and miscellaneous equipment.² A foreclosure sale was held on November 21, 2013. The principal owing on the original judgment, plus the prepayment penalty, plus the attorney fees and costs award owing at that time totaled \$9,813,340.68. This computation does not include interest that accrued since June 19, 2013 on the judgment. That accrued interest to November 21, 2013 was approximately \$209,280.21.

AgStar purchased all of the gravel pits and the commercial site by credit bid of \$7,200,000.00. AgStar made five separate credit bids allocated as follows: 1) \$600,000.00 for the Cassia pit; 2) \$1,607,086.00 for the Rock Creek and "Old" Hansen pits; 3) \$1,325,299.00 for the "New" Hansen pit; 4) \$1,067,615.00 for the Crystal Springs pit; and 5) \$2,600,000 for the commercial site.³ AgStar brings this action seeking a deficiency judgment in the amount of \$2,455,972.89, representing what it claims is the difference between the unpaid judgment as of the time of sale and these credit bids.⁴

Gordon contends that the reasonable value of these properties is much greater than these credit bids and that AgStar is therefore not entitled to any deficiency

² Four gravel pits are located in Twin Falls County. These pits and the commercial property were actually owned by Blackrock Land Holdings, LLC, one of the Defendants. The gravel pit in Cassia County was owned by Gordon Paving Company, Inc.

³ These credit bids were obtained from the Sheriff's report of sale which is contained in the court file and of which the Court takes judicial notice.

⁴ This figure is obtained from AgStar's Memorandum in Support of Motion for Entry of a Deficiency Judgment filed on February 12, 2014. The Court is unable to reconcile the Court's calculation of the monies owing with AgStar's claim. As discussed *infra*, the determination of the reasonable value of the property for the purpose of entering a deficiency judgment must be determined by examining the fair market value of the property at the time of entry of the decree, not the foreclosure sale.

judgment. Defendants assert that their properties were valued as follows: Old Hansen pit, \$3,837,028.40; New Hansen pit, \$2,945,733.00; Cassia Pit, \$4,703,612.25; Crystal Springs Pit, \$4,313,287.50; Rock Creek Quarry pit, \$1,416,319.50; and commercial property, \$4,300,000.00, for a total of \$21,515,980.75, an amount nearly \$12,000,000.00 in excess of the judgment.⁵

Trial was held to the Court on June 13, 2014 and August 13, 2014. Post-trial briefing was received on August 25, 2014 and the Court took the matter under advisement as of that date. This Memorandum constitutes the Court's Findings of Fact and Conclusions of Law pursuant to I.R.C.P. 52(a).

GOVERNING AUTHORITY

In foreclosure actions, a mortgagee may obtain a deficiency judgment if a foreclosure sale does not satisfy a mortgagor's debt. I.C. § 6-108. A deficiency judgment may enter for an amount representing "the difference between the mortgage indebtedness, as determined by the decree, plus costs of foreclosure and sale, and the reasonable value of the mortgaged property." *Id.* "[T]he deficiency is limited to the difference between the fair market value of the real property and the amount of the unpaid debt." *Quintana v. Anthony*, 109 Idaho 977, 979, 712 P.2d 678, 680 (Ct. App. 1985). Thus, the district court must determine "the fair market value of the mortgage[d] property before a deficiency judgment can be awarded." *E. Idaho Prod. Credit Ass'n v. Placerton, Inc.*, 100 Idaho 863, 870, 606 P.2d 967, 974 (1980).

⁵ These numbers are listed in an Interrogatory answer identified at trial and testified to by Brian Hansen. The "values" were derived from a pure mathematical calculation: a price per ton times estimated reserves for each pit. As the Court noted at trial, these "values" do not constitute evidence, but merely a computation based upon other witnesses' opinions.

A judgment debtor, if present at a judicial sale, may direct “the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the sheriff must follow such directions.” I.C. § 11-304.

The valuation date for purposes of determining the reasonable value of the property is the date of the original judgment. *Placerton*, 100 Idaho at 871, 606 P.2d at 975; *see also First Nat’l Bank of N. Idaho, N.A. v. Burgess*, 118 Idaho 627, 631, 798 P.2d 472, 476 (Ct. App. 1990).⁶ The “reasonable value” language contained in the statute has been interpreted to mean the same thing as “fair market value.” *Placerton*, 100 Idaho at 869-70, 606 P.2d at 973-74 (1980).

The weight to be given to the testimony of an expert witness is a question for the trier of fact. *Bean v. Diamond Alkali Co.*, 93 Idaho 32, 35, 454 P.2d 69, 72 (1969). Similarly, “[t]he determination of the credibility of witnesses and the weight to be given their testimony are exclusively within the province of the trier of facts.” *Higginson v. Westergard*, 100 Idaho 687, 692, 604 P.2d 51, 56. “[T]he opinion of an expert is not binding on the trier of fact and, provided the trier of fact does not act arbitrarily, may be

⁶ Throughout this case, the parties have stated that the date of determining the value of the property is the date of the **foreclosure sale**. Likewise, the Court may have similarly stated that on the record during trial. This is incorrect. The statute and the case law are clear that value must be determined at the time of **entry of judgment**. The problem in this case is that there has never been an amended judgment incorporating the prepayment penalty or the fee award. AgStar calculates accrued interest on the original judgment to the time of the foreclosure sale in the amount of \$209,280.21. Clearly, this sum must be excluded from the calculation. The intent of the deficiency statute is to calculate principal, prejudgment interest, and fees to the time of judgment, not interest post judgment. For the purpose of its analysis in this case, the Court determines the judgment date to be June 19, 2013 and the total judgment to be \$9,813,340.68 (the sum of the original judgment, the prepayment penalty and the fees and costs award). Thus, the maximum possible deficiency judgment in this case is \$9,813,340.68 minus \$7,200,000.00, or \$2,613,340.68. In reaching this conclusion, the post judgment costs are deemed awarded *nunc pro tunc* to the date of the original judgment resulting in a valuation date of June 19, 2013. If those sums were deemed awarded as of their final calculation in early November 2013, then the valuation date would be November 2013. Given the evidence in this case as to fair market value of the properties, the selection of June 2013 versus November 2013 is immaterial to the Court’s ultimate conclusions. A difference of five months does not alter this Court’s final conclusion of fair market value of the properties.

rejected even when uncontradicted.” *Simpson v. Johnson*, 100 Idaho 357, 362, 597 P.2d 600, 605 (1979). The district court sitting as a trier of fact may also reject the uncontradicted testimony of a witness if the testimony is inherently improbable. See *Wood v. Hoglund*, 131 Idaho 700, 703, 963 P.2d 383, 386 (1998).

FINDINGS, ANALYSIS AND DECISION

Gordon determined the order of sale of the parcels as permitted by I.C. § 11-304. AgStar does not contest this procedure. AgStar’s credit bids were based upon an appraisal report completed by Brent Stanger who was employed by AgStar. This report was dated October 3, 2012 and contained Stanger’s opinions as to the market value of the properties at issue as of September 2012.⁷ Four of those pits—the Rock Creek and Hansen pits, the “New” Hansen pit, and the Crystal Spring pit (described as items 2, 3 and 4 above) were initially collectively valued by Stanger at \$4,000,000.00.⁸ The Cassia pit and the commercial property were separately valued. AgStar entered its credit bid on the first four pits by extrapolating the gravel tonnage and acres and “came to a reasonable separation of the 4 million between each of them.” Testimony of Joseph Oliver, AgStar Representative, Tr. at 22, ll. 18-19. AgStar did not commission another appraisal closer to the sale date because Mr. Oliver stated there had not been a change in market conditions that would have significantly changed the value.⁹

⁷ Gordon contends that this report clearly states that the information in the report is only to be used by AgStar and USDA for credit decisions and therefore it wasn’t intended to be used as an opinion of value of the properties as of the sale date. The Court agrees that the report does in fact contain this limitation, but concludes that this limitation is for Mr. Stanger’s protection as an appraiser and does not preclude the use of this report for purposes of this case.

⁸ During rebuttal testimony, Stanger changed his opinion and stated that the four pits were valued at \$4,240,000.00. As will be discussed *infra*, he arrived at this higher value because he took into account new information regarding the size of the reserves in these four pits which caused him to recalculate their fair market value.

⁹ Defendant’s counsel objected to this line of questioning on the grounds that the witness was not qualified to give an opinion on overall market conditions. The Court overruled the objection because the

AgStar relies on the opinions of appraiser Stanger in support of its deficiency claim. Stanger is a well-qualified commercial appraiser. He appraised all five gravel pits and the commercial property. Although he does not have prior experience valuing gravel pits, the skills that he has acquired over the years appraising other properties are “transferable skills” qualifying him to offer expert opinion on the gravel pits in this case. Stanger educated himself on the gravel industry and certainly has specialized knowledge that qualifies him to give expert opinions pursuant to our Rules of Evidence. Like all experts, his ultimate credibility is a question of fact for this Court sitting without a jury. Stanger is clearly fully qualified to appraise the commercial property at issue in this case because he has vast experience concerning these types of properties. In fact, he appraised some of the properties that are at issue in this case in 2005 at the request of Gordon.¹⁰

Brian Kirkham, who testified on behalf of Gordon, is also a qualified appraiser. His experience is not as extensive as that of Mr. Stanger, but he holds appropriate certification and experience to offer a professional opinion regarding commercial property. While he does not have expertise to value gravel pits, that determination is irrelevant since he offered no testimony concerning the gravel pits. Rather, Kirkham appraised only the commercial property.

Gordon did not re-appraise the five gravel pits following the foreclosure sale because it considered such appraisals cost prohibitive. Rather, it relies upon the

witness was initially not asked for his opinion. Nevertheless, in response to a further question from Plaintiff's counsel, Mr. Oliver then volunteered an opinion. Mr. Oliver was not qualified to offer expert opinion on market values. To the extent that the record can be read to state such opinion, the Court gives that opinion no weight.

¹⁰ Brian Hansen, co-owner of the Defendant entities, testified that his company hired Stanger in 2005 when seeking to refinance company operations. However, he testified that he was not satisfied with Stanger's opinions after seeing his reports and then hired Integra for additional appraisal work.

appraisals of Trey Knipe, who previously worked for Integra Realty Resources.¹¹ Mr. Knipe is also a qualified commercial appraiser. His appraisals were comprised of "review" appraisals of the four Twin Falls County pits and a new appraisal of the Cassia County pit, all of which were completed in 2007 at the request of Gordon.

Brian Hansen, co-owner of the Defendant entities, also offered calculations of value utilizing the conclusions of various witnesses in this case; however, he was not permitted to offer an opinion of fair market value.

The details of these appraisals and the calculations of these witnesses are set forth as follows.

Valuation of the Commercial Property

Gordon's commercial property consists of 93.66 acres and improvements adjacent to the City of Twin Falls. It is not within the city limits, although it is in the city impact zone. As such, it does not have city services. The commercial property comprises a shop, an office building, two commercial truck scales, an equipment shed, a modular office, above and below ground fuel tanks, a well, and stream rights. The property is appurtenant to Highway 30, which is a primary arterial highway serving the Twin Falls area.

Appraisers Stanger and Kirkham have both utilized standard industry appraisal methodology in arriving at their opinions of the commercial property's value. Stanger values the land at \$16,500.00 per acre, for a total of \$1,545,390.00, and he values the improvements at \$1,048,600.00. His opinion of the total market value of this property is therefore \$2,665,000.00. As noted above, Stanger's opinion values the property as of September 2012, not the date of the original judgment or the foreclosure sale. In his

¹¹ Mr. Knipe passed away a few years ago and was thus not available for trial.

opinion, the market did not change between September 2012 and November 2013, but he admits that in order to properly arrive at that conclusion, he would have to examine additional data to offer an accurate opinion of value as of the latter date.

By contrast, Kirkham values the property as of November 2013. He values the land at \$23,000.00 per acre, for a total of \$2,150,000.00, and he values the improvements at \$1,598,143.73. His opinion of the total market value of the property is therefore \$3,750,000.00. The difference between these two opinions is \$1,085,000.00. Notably, Kirkham's opinion is based upon current data as of November 2013; Stanger's is not.

Both appraisers agree that the highest and best use of the property is continuation of its current use as a commercial facility. They also have similar agreement on the "conditions" pertaining to the scope of their appraisals. However, as stated, there is a significant difference in the ultimate opinions reached by these appraisers. Based upon the Court's experience in analyzing appraisals, one would reasonably expect a difference of a small percentage in valuation between competent appraisers, and certainly no more than a 5-10% variation between two appraisals by qualified experts. Here, however, the difference approaches 39%. The Court has carefully reviewed both appraisals in an attempt to ascertain a viable reason for this significant difference. The answer to this question is that the appraisers simply arrive at different conclusions regarding acreage value and building costs. In some cases, they use the same comparables to determine market value. In other cases they use totally different comparables.

The Court makes the following observations and draws the following conclusions regarding the two appraisals. Stanger's appraisal is significantly more detailed than that of Kirkham and utilizes more comparable sales. He adjusts some of his comparable land values downward because of his view of declining market conditions. Interestingly, 76.7 acres of the property was purchased in 2007 for \$1,600,000.00 (or \$20,860.00 per acre), a figure that is greater than Stanger's valuation of all of the land, consisting of 93.66 acres, as of September 2012. Stanger believes that land values have decreased between 2007 and 2012. Moreover, he places significantly less value on the property's water rights, modular office, and fuel tank system than does Kirkham. Stanger appraises these items at a combined value of \$65,000.00, whereas Kirkham values the same items at \$272,758.00, for a difference of \$207,758.00.

The Court finds that Kirkham's opinion of the commercial property's market value is slightly more credible than Stanger's because Kirkham's valuation date is closer in time to the judgment date. However, Kirkham's opinion of the market value of the acreage is also heavily influenced by a comparable sale of 89.43 acres which was not considered by Stanger because the sale had not occurred at the time he completed his appraisal. The per acre value of that comparable sale, at \$43,376.00, is significantly greater than two other sales relied upon by both parties—a sale of 78.42 acres on Kimberly Road at \$20,262.00 per acre and the sale of the property presently occupied by Chobani, 193.06 acres also on Kimberly Road at \$25,887.00 per acre. Both of these latter two sales involved property with superior amenities (sewer, water) to the subject property.

The difference in the appraisers' opinions of land values can be explained, in part, by the passage of time of nearly one year. It can also be explained because the two comparable sales involved bare land versus land with existing structures, which could limit the development potential of the property. Finally, it can be explained, in part, because the properties on Kimberly Road were purchased with the assistance of the Twin Falls Urban Renewal agency, which provided financing assistance to the buyer. This fact has a tendency to overinflate land values compared with sales in which government assistance is not involved.

The Court rejects both appraisers' opinions of value for the acreage. Stanger's devaluation of the land is not reflective of the increase in value of property experienced in Twin Falls through 2013. Kirkham's valuation is improperly weighted by the \$43,376.00 per acre comparable which appears totally inconsistent with other comparable sales. Taking these factors into consideration, the Court finds that the reasonable value of the 93.66 acres of land at the time of the foreclosure sale is \$20,860.00 per acre, or \$1,953,747.00. This figure represents the actual value of the purchase price of the 76.7 acres in 2007 (\$20,860.00 per acre) multiplied by 93.66 acres. The Court simply does not believe, and therefore does not find, that the real estate market decreased as Stanger contends based upon the sales data considered by both appraisers.

Stanger values the site improvements at \$1,048,600.00. Kirkham values the site improvements at \$1,598,143.73. With one exception, the Court finds Stanger's valuation of the improvements to be more credible. His analysis is more detailed than that of Kirkham. He uses comparable sales that are more similar to the subject

property, whereas Kirkham uses comparable improvements (sales 5, 6 and 7) that do not appear to be similar to the subject property. In particular, he provides no convincing analysis why comparison to sale 5 (at \$86.00 per square foot) is appropriate for purposes of valuing the office building on the subject property. Thus, except for the valuation of miscellaneous site improvements, the Court accepts Stanger's valuation of \$1,048,600.00.

As stated above, Kirkham values the miscellaneous site improvements consisting of the modular office, fuel tanks, and water rights at \$272,758.00, while Stanger values these site improvements at \$65,000.00, for a difference of \$207,758.00. Stanger's conclusion is largely based upon the direct sales approach, yet he admits that there are very poor comparables. Kirkham's conclusion is largely based upon the cost approach. The items in this category are unique to the highest and best use of this property. Kirkham places considerable value on the fuel tanks (\$163,012.00), while Stanger fails to adequately address this particular item in his appraisal. The Court thus finds Kirkham's opinion of the value of these particular items to be more persuasive. Accordingly, Stanger's valuation shall be adjusted upward by \$207,758.00, and the Court therefore finds that the total value of the improvements is \$1,256,358.00 (\$1,048,600.00 plus \$207,758.00).

In summary, the Court finds the reasonable value of the commercial property at the date of the foreclosure sale to be \$1,953,747.00 for the land and \$1,256,358.00 for the improvements, for a grand total of \$3,210,105.00.

Methodology for Valuing the Gravel Pits

Fair market value is often described as the price a willing buyer and a willing seller would agree upon for the sale of property. See BLACK'S LAW DICTIONARY 597 (6th ed. 1990). Although neither Stanger nor Knipe used this precise wording in their reports, it is clear that they both utilized a definition of market value that encompasses this concept. It is clear that they have no significant disputes concerning the factual data. Indeed, Knipe adopted the factual findings of Stanger for the Twin Falls pits, with the exception of ultimate valuation. It is likewise clear that neither Stanger nor Knipe has superior credentials to the other for evaluating gravel pits. Both seem to agree that a direct sales approach and an income approach are the most appropriate methods for valuing gravel pits.

Integral components of both of these approaches, which rely upon a tonnage versus an acreage approach, requires assumptions of: 1) the estimated gravel reserves contained in each pit, measured in tons; 2) the estimated consumption, or extraction, rate of the reserves in each pit; 3) a discount rate; 4) a royalty rate; 5) a holding period; 6) qualitative factors; and 7) liquidation costs. Both appraisers agree that a tonnage computation is appropriate for the pits located in Twin Falls County. Knipe agrees that this approach is also appropriate for the Cassia County pit, however, Stanger disagrees, asserting that market value in the Cassia area is more appropriately measured by examining sales on a per acre basis.

Brian Hansen's approach is to multiply the assumed royalty price per ton of total reserves against the estimated reserves. As a preliminary finding, the Court rejects this approach. Mr. Hansen is very knowledgeable about gravel operations; however, he is not an appraiser. His approach is totally contradictory to the approaches utilized by

both appraisers in this case. While the appraisers certainly have different opinions, they do not reach those opinions using different approved methodologies. Thus, to the extent that Mr. Hansen's testimony reflects an ultimate opinion of fair market value, the Court summarily rejects it. However, his opinions of "value added" by way of factual testimony concerning improvements to the pits, the zoning process, the permitting process, reclamation issues, access to the properties, available water, and engineering studies, although not quantifiable, are appropriate factors to consider when reaching the ultimate conclusion as to the total value of the pits.

The Cassia County Gravel Pit

This property consists of an operating gravel pit comprised of 28.5 acres and 42.23 acres of adjacent sprinkler-irrigated cropland, for a total of 70.73 acres.¹² Gordon purchased this property in February 2007 for \$471,182.00. At that time, the property was farmland and was totally undeveloped as a gravel pit. Stanger had not previously valued this property because Gordon did not own it at the time that he completed his appraisals for the Twin Falls County pits.

Stanger opines that the per acre approach versus a tonnage/reserve approach is the sales methodology utilized in the Cassia area despite the fact that it is not used elsewhere. Although Stanger acknowledges that many gravel pits are valued based upon an estimation of gravel tonnage/reserves, he nevertheless values this pit based upon a **per acre** value (irrespective of tonnage). He concludes that farmland prices have increased since 2007, that cropland values as of September 2012 approached \$6,000.00 per acre, and that, based upon sales of other gravel pits (analyzed on a per

¹² This acreage differs from that shown on Cassia County's tax rolls from 2011, which are referenced at page 25 of Stanger's report.

acre basis), gravel pits sell at a 35-50% premium over farmland prices. Stanger is of the opinion that \$8,500.00 per acre (a premium of approximately 41%) is indicative of fair market value. Hence, \$8,500.00 multiplied by 70.73 acres equals \$601,205.00, or his ultimate opinion of value of \$600,000.00. He provides no detailed analysis as to why he selects a 41% premium.

There is evidence in the record (and acknowledged by Stanger) that by 2013, there were some farm land sales in the Cassia area in the \$8,000.00 per acre range. Theoretically then, applying the 41% premium, one could reasonably conclude that the pit was of higher value, to wit: \$8,000.00 per acre x 70.73 acres x 1.41 equals \$797,834.40. However, no one offered that actual opinion at trial.

Gordon vehemently disagrees with this approach because it contends that it is not reflective of the pit's tonnage reserves. Dave Coats, former owner of Triple C Concrete, who is very knowledgeable about gravel pits, also opines that tonnage and quality must be factored into valuation and that this is a consideration for sales of gravel permits in the Mini-Cassia area. Mr. Knipe certainly agreed with this concept, and so does Mr. Hansen. This pit is fully operational, has received Idaho Transportation Department ("ITD") certification (as have all of Gordon's pits), contains high quality gravel, has a favorable location for transportation of the gravel, and reserves estimated at 6,271,483 cubic yards or 9,407,224.50 tons (6,271,483 x 1.5 conversion factor). Coats was of the opinion that a gravel pit operator would pay between two and three times the market value of farm ground. With farm ground selling at \$8,000 per acre at the time of the judgment, and with the improvements to this pit considered, a conservative estimate of value of this pit is \$1,131,680 (70.73 acres X \$16,000 per

acre). On the other hand, Coats determined using a more liberal estimate, the value of this pit was as high as \$1,697,520 (70.73 acres X \$24,000 per acre).

Knipe's valuation effective September 2007 is markedly different both in ultimate value and in methodology. He considered comparable sales in the \$13,500 per acre value range. Based upon adjustments for differences in royalty rates because comparable sales were in the Treasure valley, and utilizing a tonnage approach, this type of comparable sales analysis yielded a value of \$1,850,000, or roughly \$26,000 per acre, a value remarkably similar to the high end of Mr. Coats' opinion. However, Knipe also used an income approach and concluded, by using a 12% discount factor, that the pit is valued at \$2,365,000.

There are at least two major problems with using Knipe's appraisal. First, both valuations were conducted approximately six years earlier than the required valuation date. Second, under both approaches, he uses tonnage estimates derived from the Cox analysis, and thus grossly understates the ultimate values. By using the Harper/Leavitt tonnage estimates and a \$.27 per ton valuation (the mean valuation of tonnage value according to Knipe's market analysis, the Cassia pit would be valued at \$2,539,950 (9,407,244 tons X \$.27/ton).

Here again the Court rejects all of the foregoing **final conclusions** of value. Stanger's opinion fails to adequately consider improvements to the pit and tonnage. Coat's opinion falls far short of an "appraiser's opinion." Knipe's opinions, as stated above, are dated and make erroneous tonnage assumptions. Hansen's testimony cannot be considered as viable evidence of an "opinion." Nevertheless, the Court can conclude that the fair market value of the pit lies somewhere between the opinions of

Stanger and Knipe. A common thread in the market analysis of both appraisers demonstrates that a gravel pit can be valued at a premium to farm land values. Although Coats is not an appraiser, his testimony is particularly convincing to the Court based upon his actual experience in both operating a gravel operation and buying and selling gravel pits in the Mini-Cassia area. When the Court considers that the Anderson pit is now a developed and operating pit, factors in the new information about tonnage estimates, and considers comparable acreage valuations and the fact that gravel pits in this area do sell at a premium to farm land values, the Court finds that the reasonable value of the Cassia pit at the time of judgment was at least, and therefore is, \$1,500,000 (70.73 acres x \$8500/ acre x 2.5 premium, the average between Coats' high and low premium).

The Twin Falls County Gravel Pits

The four Twin Falls County gravel pits--Crystal Springs, "Old" Hansen, "New" Hansen and Rock Creek--have been valued by all parties based upon a tonnage/reserve analysis. Stanger used both the direct sales approach and the income approach in reaching his original conclusion that these four properties were valued at \$4,000,000.00 as of September 25, 2012. This ultimate conclusion is based upon the following assumptions: 1) that the reserves in the four pits as of September 30, 2012 is 15,473,395 tons based upon the opinions of John Root, surveyor, and John Cox, engineer, from studies completed in 2005; 2) that \$0.27 per ton is a reasonable price for gravel; and 3) that as to the income approach, the holding period is 16 years, a 14% discount rate is reasonable, there is a 10% marketing cost at the end of the holding period, and the royalty rate is a constant of \$1.50 per ton. The comparable sales data

consists of two sales in the Twin Falls area and the balance in the Boise area. Stanger recognizes that the reliability of his conclusions would be improved with additional sales data in the Twin Falls area. Stanger also recognizes that much of the sales data reflects the depressed state of the economy in the several years before the effective date of his appraisal. When Stanger appraised these four pits in 2005, he valued them at \$7,000,000. His second opinion reflects his conclusion that market conditions worsened between 2005 and 2012.

Knipe's opinion is that the value of the four pits was \$8,000,000 as of September 2007. Knipe, like Stanger relied upon a tonnage estimate that has clearly been disproved by the Harper/Leavitt analysis. Stanger finds this tonnage variation somewhat inconsequential when utilizing the income approach, acknowledging that this changes his final opinion by only \$420,000. There is no evidence in the record as to how this tonnage change would affect the Integra appraisal.

The primary difficulty of valuing these pits revolves around the assumptions made by the parties. While the parties have little disagreement about the quantity of reserves in these pits, they make significantly different assumptions about discount rates, royalty rates, holding periods, rates of consumption and tonnage values. These factors are significant especially to the extent that the factors are influenced by the demand for gravel. Hansen provided extremely credible testimony that the demand for gravel products have increased in the last few years. In particular, he emphasized that his company's pits are more valuable generally because they are ITD pre-qualified thus materially affecting market share in the Twin Falls area. It is Stanger's opinion that land values have not materially increased in the past few years. Yet an integral part of

income valuation method relates to the rate of consumption of reserves. Indeed, Stanger's de minimus conclusion about the effect of the Harper/Leavitt studies demonstrates the importance of analyzing consumption rates. If a gravel pit operator can sell gravel quicker at a profit, it is only logical that the operator would pay more for the pit at the outset. It is for this major reason that the Court does not find Stanger's opinion totally credible, although not inherently improbable.

Further, the sales comparables used require major adjustments because there is little information available concerning sales in this community. This fact, combined with the analysis set forth above that true market conditions were not considered, convinces the Court that the reasonable value of the pits was far greater than opined by Stanger.

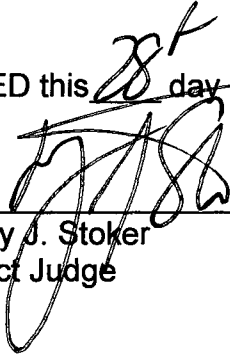
If the value of the Twin Falls pits is less than approximately \$5,103,235 (the judgment amount of \$9,813,340 less the commercial property value of \$3,210,105, less the Cassia pit value of \$1,500,000), then Agstar is not entitled to any deficiency in this case. The Court is not convinced that the value of these four pits has plummeted from the \$7,000,000 value attributed to them by Stanger in 2005 to a value of \$4,240,000 based upon his revised 2012 appraisal. The Court rejects Mr. Stanger's opinion expressed in this trial as to the value of these pits. The Court finds that the reasonable value of the Twin Falls pits at the time of sale is at least \$7,000,000 as it was in 2005.

CONCLUSION

In summary, the Court finds that the reasonable values of the foreclosed properties totaled at least \$11,710,105 at the time of entry of the decree and that the amount owed by that decree, if prepayment penalty and attorney fees are included, was at most \$9,813,340. The burden of proving a deficiency lies with the plaintiff. Overall,

Agstar has not proven by a preponderance of the evidence that the reasonable values of the foreclosed properties totaled less than the balance owed as determined by the decree. Accordingly, AgStar's motion for deficiency judgment is DENIED.

DATED this 28th day of August, 2014.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

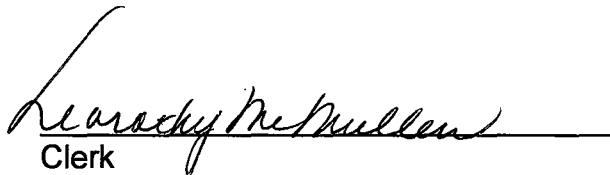
I hereby certify that on the 28 day of August 2014, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

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Clerk

AUG 28 2014

By _____ 9:45 AM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

vs.

GORDON PAVING COMPANY, INC., et
al.,

Defendants.

Case No. CV 2012-2731

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS: Plaintiff's Motion for Deficiency
Judgment is denied.

DATED this 28th day of August 2014.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

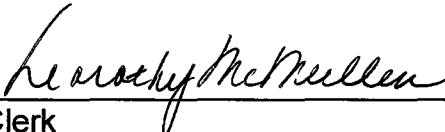
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DISTRICT COURT
 TWIN FALLS CO., IDAHO
 FILED

2014 SEP -4 PM 4:35,

BY _____ CLERK
SP DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
 an Idaho corporation; GORDON PAVING
 COMPANY, INC., an Idaho Corporation;
 BLACKROCK LAND HOLDINGS, LLC,
 an Idaho limited liability company; TOWN
 AND COUNTRY BANK, INC.; and FIRE
 SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**MOTION FOR ORDER DIRECTING THE
 DEFENDANTS TO TRANSFER TITLES
 OF VEHICLES AND FOR COMFORT
 ORDER RE PERSONAL PROPERTY
 AUCTION**

COMES NOW the Plaintiff, by and through its attorney of record, and pursuant to the judgment and decree of foreclosure entered in this case, and moves the Court for an order directing the Defendants to transfer the titles to the vehicles upon which AgStar Financial Services, ACA has foreclosed, and for a comfort order approving sale of the personal property collateral by public

**MOTION FOR ORDER DIRECTING THE DEFENDANTS TO TRANSFER TITLES
 OF VEHICLES AND FOR COMFORT ORDER RE PERSONAL PROPERTY
 AUCTION- 1**

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auction rather than sheriff sale. This motion is based on the pleadings on file herein and the papers filed contemporaneously.

I. INTRODUCTION

On June 19, 2013, the Court entered a judgment and decree of foreclosure in this case, foreclosing AgStar Financial Services, ACA's ("AgStar") interest in the personal property collateral of the Defendants. (Judgment and Decree of Foreclosure, entered June 19, 2013.) That collateral includes a number of titled vehicles, as identified in the attached Exhibit A ("Vehicle List") to Affidavit of Kersti H. Kennedy, filed contemporaneously. AgStar is requesting an order from the Court requiring Defendants to authorize transfer so that title to the vehicles can be properly transferred to AgStar in anticipation of selling the vehicles at auction. For most vehicles, this simply means that a representative of the Defendants needs to sign a form in front of a notary.

Further, AgStar is requesting the Court enter an Order approving the sale of the personal property collateral at-issue in this lawsuit. Due to logistical issues with the sheriff's office and the nature of the personal property, AgStar plans to sell the personal property by auction through Masters Auction Service.

II. ARGUMENT

Defendants have provided a number of the titles to these vehicles as noted on the Vehicle List. However, there are still titles missing for many of the vehicles. After discussing with the Defendants' counsel, AgStar determined that the titles are missing, and the Defendants do not know their whereabouts. (Kennedy Aff. ¶ 3.) AgStar has hired auctioneer Masters Auction Service to sell the vehicles at auction. (*Id.* ¶ 4.) However, the auctioneer cannot sell the vehicles without a title. (*Id.*)

**MOTION FOR ORDER DIRECTING THE DEFENDANTS TO TRANSFER TITLES
OF VEHICLES AND FOR COMFORT ORDER RE PERSONAL PROPERTY
AUCTION- 2**

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AgStar's counsel has been working with the Idaho Transportation Department ("ITD") and the remaining lienholders to secure duplicate titles so that the vehicles may be sold at auction. (*Id.* ¶ 5.) However, ITD has informed AgStar it will not create new titles without the Defendants' authorization because the foreclosure is not a traditional repossession in which AgStar is listed as lienholder, even though AgStar is the owner by operation of law. (*Id.*) AgStar believes that this is an incorrect interpretation of the law, but wishes to avoid litigation with ITD. (*Id.*)

To avoid having to sue ITD, AgStar is requesting that the Court require the Defendants to sign the paperwork authorizing the ITD to create duplicate titles transferring ownership to AgStar. AgStar is preparing the paperwork and simply needs the authorization of the Defendants' representative in the form of a notarized signature. (*Id.* at ¶ 6.)

Further, AgStar requests permission to sell the personal property collateral by auction through Masters Auction Service. The Gordon Paving personal property includes a vast assortment of vehicles, equipment, office equipment, office supplies, etc., which have become impracticable to sell by sheriff's sale. (*Id.* at ¶ 7.) For this reason AgStar desires that the Court recognize through an order that AgStar may proceed with the auction rather than sheriff's sale.

III. CONCLUSION

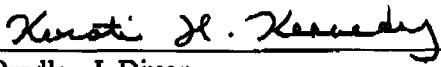
Based on the above, AgStar is requesting the Court order the Defendants to provide the authorization needed to transfer title in the vehicles to AgStar in anticipation of the auction, and enter an order approving sale by auction through Masters Auction Service.

**MOTION FOR ORDER DIRECTING THE DEFENDANTS TO TRANSFER TITLES
OF VEHICLES AND FOR COMFORT ORDER RE PERSONAL PROPERTY
AUCTION- 3**

76953639.1 0047071-00001

DATED: September 4, 2014.

STOEL RIVES LLP



Bradley J. Dixon
Kersti H. Kennedy
Attorney for Plaintiff

**MOTION FOR ORDER DIRECTING THE DEFENDANTS TO TRANSFER TITLES
OF VEHICLES AND FOR COMFORT ORDER RE PERSONAL PROPERTY
AUCTION- 4**

76953639.1 0047071-00001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of September, 2014, I served a true and correct copy of the foregoing **MOTION FOR ORDER DIRECTING THE DEFENDANTS TO TRANSFER TITLES OF VEHICLES AND FOR COMFORT ORDER RE PERSONAL PROPERTY AUCTION-** in the above-entitled matter as follows:

<p>Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com</p> <p><i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i></p>	<p><input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

By: Kersti H. Kennedy
Kersti H. Kennedy

**MOTION FOR ORDER DIRECTING THE DEFENDANTS TO TRANSFER TITLES
OF VEHICLES AND FOR COMFORT ORDER RE PERSONAL PROPERTY
AUCTION- 5**

76953639.1 0047071-00001

Bradley J. Dixon, ISB No. 6167
 Email: *bjdixon@stoel.com*
 Kersti H. Kennedy, ISB No. 9064
 Email: *khkennedy@stoel.com*
 STOEL RIVES LLP
 101 S Capitol Boulevard, Suite 1900
 Boise, ID 83702
 Telephone: (208) 389-9000
 Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
 TWIN FALLS CO., IDAHO
 FILED

2014 SEP -4 PM 4:35

BY _____
 _____ CLERK
 _____ DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
 an Idaho corporation; GORDON PAVING
 COMPANY, INC., an Idaho Corporation;
 BLACKROCK LAND HOLDINGS, LLC,
 an Idaho limited liability company; TOWN
 AND COUNTRY BANK, INC.; and FIRE
 SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**AFFIDAVIT OF KERSTI H. KENNEDY
 IN SUPPORT OF MOTION FOR ORDER
 DIRECTING THE DEFENDANTS TO
 TRANSFER TITLES OF VEHICLES AND
 FOR COMFORT ORDER RE PERSONAL
 PROPERTY AUCTION**

STATE OF IDAHO)
) ss:
 County of Ada)

I, Kersti H. Kennedy, being over the age of eighteen years and competent to make this

Affidavit, after first being duly sworn, and upon his own personal knowledge, states as follows:

**AFFIDAVIT OF KERSTI H. KENNEDY IN SUPPORT OF MOTION FOR ORDER
 DIRECTING THE DEFENDANTS TO TRANSFER TITLES OF VEHICLES AND FOR
 COMFORT ORDER RE PERSONAL PROPERTY AUCTION- 1**

76983058.1 0049747-00001

1. I am an attorney with the law firm of Stoel Rives LLP and counsel of record for Plaintiff AgStar Financial Services, ACA ("AgStar") in the above-entitled action. I make this affidavit in support of Plaintiff's Motion for Order Directing the Defendants to Transfer Titles of Vehicles and for Comfort Order re Personal Property Auction.

2. That attached hereto as Exhibit A is a spreadsheet showing the vehicles upon which AgStar has foreclosed, with a notation as to which titles remain missing. Defendants have provided titles for the other vehicles.

3. After multiple conversations with the Defendants' counsel, AgStar determined that the titles are missing. The Defendants' counsel has stated that the Defendants have provided all titles in their possession.

4. AgStar has hired Masters Auction Service to auction the vehicles on October 2, 2014. Masters cannot sell the vehicles without titles.

5. My office has communicated extensively with the Idaho Transportation Department, which refuses to issue duplicate titles in favor of AgStar even though AgStar is owner by operation of law. AgStar does not wish to engage in litigation with ITD.

6. AgStar is preparing the paperwork for title transfer. For most vehicles, all that is needed is a notarized signature.

7. AgStar attempted to sell the personal property of Gordon Paving through the sheriff, but by communicating with the sheriff's office, AgStar learned that it would be cost and time prohibitive based on the sheriff's requirements. Gordon Paving owned a vast assortment of personal property including business and office equipment, and many small office items which the auction service was better suited to deal with than the sheriff. For that reason, AgStar hired Masters Auction Service to hold the personal property auction October 2, 2014.

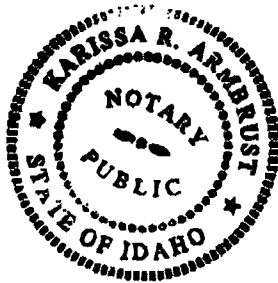
**AFFIDAVIT OF KERSTI H. KENNEDY IN SUPPORT OF MOTION FOR ORDER
DIRECTING THE DEFENDANTS TO TRANSFER TITLES OF VEHICLES AND FOR
COMFORT ORDER RE PERSONAL PROPERTY AUCTION- 2**

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Further your affiant sayeth naught.

Kersti H. Kennedy
Kersti H. Kennedy

SUBSCRIBED AND SWORN TO before me this 4th day of September, 2014.



Karissa R. Armbrust
Notary Public for Idaho
My commission expires: ~~11/24/2016~~ ^{Nampa} 03/19/19

**AFFIDAVIT OF KERSTI H. KENNEDY IN SUPPORT OF MOTION FOR ORDER
DIRECTING THE DEFENDANTS TO TRANSFER TITLES OF VEHICLES AND FOR
COMFORT ORDER RE PERSONAL PROPERTY AUCTION- 3**

76988058.1 0049747-00001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of August, 2014, I served a true and correct copy of the foregoing **AFFIDAVIT OF KERSTI H. KENNEDY IN SUPPORT OF MOTION FOR ORDER DIRECTING THE DEFENDANTS TO TRANSFER TITLES OF VEHICLES AND FOR COMFORT ORDER RE PERSONAL PROPERTY AUCTION** in the above-entitled matter as follows:

<p>Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com</p> <p><i>Attorneys for Defendants:</i> <i>Northwest Sand & Gravel, Inc.</i> <i>Gordon Paving Company, Inc.</i> <i>Blackrock Land Holdings, LLC</i></p>	<p><input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

By: Kersti H. Kennedy
Kersti H. Kennedy

AFFIDAVIT OF KERSTI H. KENNEDY IN SUPPORT OF MOTION FOR ORDER DIRECTING THE DEFENDANTS TO TRANSFER TITLES OF VEHICLES AND FOR COMFORT ORDER RE PERSONAL PROPERTY AUCTION- 4

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Exhibit A

EXHIBIT A: VEHICLE LIST

Year	Make	Model	VIN	Lien Y/N	Do we have Title Y/N
2000	GMC	SRA	1GTEC14W9YE183687	N	No
1994	Ford	F250	1FTHX26K5RKB67328	N	No
2008	Ford	F350	1FDWW35R48EA02507	N	No
1987	Dodge	TK	1B6MD3418HS432771	N	No
2003	Chevy	SLV	1GCHK23193F213270	N	No
1985		TL	1C9F12109F1216377	N	Yes
1996	Ford	F35	1FTJW36F1TEB75638	N	Yes
1996	Ford	TK	1FDYW82E4TVA00739	N	Yes
2002	Intl	TK	3HSCNASR52NO48160	N	Yes
1966	Perl	TL	665983	N	Yes
1976	Trim	TL	N40515	N	Yes
1985	Chev		1GBJC34M0FV101551	N	Yes
2000	Friht	TK	1FV63MCA8YPF66348	N	Yes
1996	Beal	TL	1BN2M4025TN009251	N	Yes
1989	Beal	TL	1BN1M1527KN009026	N	Yes
2006	Chev	SLV	3GCEC14X06G224979	N	Yes
2006	Chev	SLV	3GCEC14X96G224026	N	Yes
2006	Chev	SLV	3GCEC14X46G253420	N	Yes
1967	Ford	TK	F35YRB48024	Y- Bank of America	No
1984	INTL	TK	1HSZEHURXEHA23336	Y- Bank of America	No
1975	GMC	TK	TCY335S509745	Y- Bank of America	No
2002	INTL	TK	1HTSLAAN92H500326	Y- Bank of America	No
1981	Ford	TK	1FDNN70HXBVJ42098	Y- Bank of America	No
2002	TRLK	TK	1TKC024212M098531	Y- John Deere Const & Forestry	No
1994	Ford	TK	1FDYY90R9RVA20158	Y- Wells Fargo Equip.	No
2001	Chev	TK	4KBC4B1R21J804164	Y- Wells Fargo Equipment	No

132
Brent T. Robinson, ISB No. 1932
ROBINSON & TRIBE
Attorneys at Law
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436 4717
Facsimile (208) 436-6804
btr@idlawfirm.com

DISTRICT COURT
TWIN FALLS, IDAHO

2014 SEP 11 PM 3:54

BY _____
SP _____

Attorneys for defendants:
Northwest Sand & Gravel, Inc.,
Gordon Paving Company, Inc., and
Blackrock Land Holdings, LLC

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

vs.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 2012-2731

**DEFENDANTS' MOTION FOR
AWARD OF ATTORNEY'S FEES AND
COSTS**

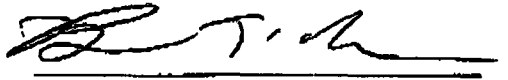
COMES NOW the above named defendants Northwest Sand & Gravel, Inc.,
Gordon Paving Company, Inc., and Blackrock Land Holdings, LLC, hereafter "Gordon Paving,"
by and through its undersigned counsel of record, and pursuant to Rules 54(d)(1)(B),

DEFENDANTS' MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS-1

54(d)(1)(C), 54(d)(1)(D), and 54(e)(1) of the Idaho Rules of Civil Procedure ("I.R.C.P."), Idaho Code § 12-120(3) and as the prevailing party in this matter, hereby moves this Court for an Order granting Gordon Paving its fees and costs incurred in this matter. Gordon Paving requests this Court award it \$2911.16 in costs as a matter of right, \$854.01 in discretionary costs, and attorney's fees of \$21,512.00, for a total of costs and fees of \$25,277.17

This Motion is supported by the accompanying Plaintiff's Memorandum in Support of Motion for Award of Attorney's Fees and Costs and the Affidavit of Counsel in Support of Plaintiff's Memorandum in Support of Motion for Award of Attorney's Fees and Costs, and the record herein.

DATED this 11th day of September, 2014.



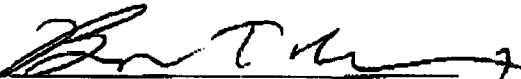
Brent T. Robinson
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2014, I caused to be served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

Bradley J. Dixon, Esq.
Kersti H. Kennedy, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard,
Suite 1900
Boise, Idaho 83702

☐ U.S. Mail, Postage Prepaid
☐ Facsimile (208) 389-9040
☒ E-mail *bjdixon@stoel.com*
☐ Special handling _____


Brent T. Robinson

132

Brent T. Robinson, ISB No. 1932
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 Attorneys at Law
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 Rupert, Idaho 83350
 Telephone (208) 436 4717
 Facsimile (208) 436-6804
 btr@idlawfirm.com

DISTRICT COURT
 TWIN FALLS, IDAHO

2014 SEP 11 PM 3:55

BY _____

SP

Attorneys for defendants:
 Northwest Sand & Gravel, Inc.,
 Gordon Paving Company, Inc., and
 Blackrock Land Holdings, LLC

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

vs.

NORTHWEST SAND & GRAVEL, INC.,
 an Idaho corporation; GORDON PAVING
 COMPANY, INC., an Idaho corporation;
 BLACKROCK LAND HOLDINGS, LLC,
 an Idaho limited liability company; TOWN
 AND COUNTRY BANK, INC.; and FIRE
 SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 2012-2731

**DEFENDANTS' MEMORANDUM IN
 SUPPORT OF MOTION FOR AWARD
 OF ATTORNEY FEES AND COSTS**

COMES NOW the above named defendants Northwest Sand & Gravel, Inc.,
 Gordon Paving Company, Inc., and Blackrock Land Holdings, LLC, hereafter "Gordon Paving,"
 by and through their undersigned counsel of record, and pursuant to Rules 54(d)(1)(B),
 54(d)(1)(C), 54(d)(1)(D), and 54(e)(1) of the Idaho Rules of Civil Procedure ("I.R.C.P."), Idaho

DEFENDANTS' MEMORANDUM IN SUPPORT
 OF MOTION FOR AWARD OF ATTORNEY FEES AND COSTS-1

Code § 12-120(3) and as the prevailing party in this matter, hereby file the following Memorandum in Support of Motion for Award of Attorney fees and Costs, which fees and costs to the best of Gordon Paving's knowledge and belief are correct and in compliance with I.R.C.P. 54(d) and (e):

I. INTRODUCTION

On August 28, 2014, this Court entered its Judgment denying Plaintiff a Deficiency Judgment against Gordon Paving. The Judgment was entered into as a result of this Court's August 28, 2014, Memorandum Opinion. As the prevailing party, Gordon Paving brings the motion to recover its attorney fees and costs incurred in this matter.

II. ANALYSIS

A. Gordon Paving is Entitled to an Award of Attorney Fees and Costs

Gordon Paving is entitled to an award of attorney fees and costs, as the prevailing party in this matter, pursuant to Idaho Code Section 12-120(3). The amount of costs and attorney fees expended by Gordon Paving and, therefore requested by it, are \$3,351.16 as a matter of right, \$414.01 in discretionary costs, and attorney fees of \$21,512.00, for a total of costs and fees of \$25,277.17. *See* Affidavit of Counsel in Support of Defendants' Motion for Award of Attorney Fees and Costs ("Counsel Aff.") at Ex. A.

Pursuant to Idaho law, a party seeking attorney fees must assert the specific statute, rule or case authority for its claim. *MDS Invs., LLC v. State of Idaho*, 65 P.3d 197, 206 (Idaho 2003). Here, Idaho Code Section 12-120(3) provides the basis for this Court to award Gordon Paving its attorney fees. The statute provides, in pertinent part:

In any civil action to recover on ... any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes.

Idaho Code § 12-120(3). If Gordon Paving is the prevailing party in an action to recover on a commercial transaction, then an award of attorney fees is mandatory. *Grover v. Wadsworth*, 147 Idaho 60, 205 P.3d 1196, 1201 (2009).

Whether an award of attorney fees under this statute is proper here involves a multi-tiered analysis. Initially the Court must determine who the prevailing party is and then whether the case involved a commercial transaction. Here, Gordon Paving is the prevailing party, as Gordon Paving prevailed in its defense against Plaintiff's Motion for Deficiency Judgment and the Court denied Plaintiff's motion on August 28, 2014.

This case also involved a commercial transaction. Commercial transactions are broadly defined in the state statutes to include all transactions except those for personal or household purposes. Idaho Code § 12-120(3). An award of attorney fees under Idaho Code Section 12-120(3) is warranted when "the commercial transaction comprises the gravamen of the lawsuit." *Brower v. E.I. DuPont De Nemours & Co.*, 792 P.2d 345, 349 (Idaho 1990). To make that determination, Idaho courts have engaged in a two-step analysis. *Iron Eagle Dev. LLC v. Quality Design Sys., Inc.*, 65 P.3d 509, 515 (Idaho 2003). "First, the commercial transaction must be integral to the claim, and second, the commercial transaction must provide the actual basis for recovery." *Id.* (citing *Great Plains Equip., Inc. v. Nw. Pipeline Corp.*, 36 P.3d 218, 223 (Idaho 2001)).

The instant transaction was commercial in nature and integral to Plaintiff's claim against Gordon Paving. The underlying commercial loans of \$9 million and \$1 million made by Plaintiff to Gordon paving are the gravamen of the Plaintiff's motion. Gordon Paving obtained financing from the Plaintiff through the Bond Purchase Agreements dated December 10, 2007

and April 30, 2008. The purpose of these agreements was to provide capital to Gordon Paving for commercial purposes. These commercial loans gave Plaintiff's its security interest in Gordon Paving's real estate and provided the basis for the foreclosure sale and ultimately the motion for a deficiency judgment. Accordingly, it is undisputed that a commercial transaction between Plaintiff and Gordon Paving comprised the gravamen of the instant action. Gordon Paving is entitled to an award of attorney fees and costs pursuant to Idaho Code Section 12-120(3).

Furthermore, when the Court considers the amount of attorney fees to award Rule 54(e)(3) sets out several factors for it to consider. Among these factors the rule contemplates are the time and labor required, novelty and difficulty of the questions, and the amount involved and the results obtained. In this case the law was very clear; however, the facts were extremely difficult as they required the parties to go over pages and pages of appraisals and review the methodology of the different appraisals and compare them to each other. This process was very tedious and time consuming. Also, the Court must consider that the total fees and costs sought by Gordon Paving total \$25,277.17 and it was successful in defending against a \$2.9 million claim or in other words Gordon Paving is seeking just over eight percent in fees of the claim Defendant brought against it. In sum, these factors indicate that the amount of fees Gordon Paving is seeking is very reasonable and the Court would be well within its discretion in awarding the entire amount.

B. Gordon Paving is Entitled to Costs

As the prevailing party, pursuant to I.R.C.P. Rule 54(d)(1) Gordon Paving is also entitled to an award of certain costs as a matter of right, and certain discretionary costs.

Pursuant to Rule 54(d)(1)(C)(4), Gordon Paving is entitled to an award, as a matter of right, of \$132.60 for travel expenses of witnesses. *See Counsel Aff. at Ex. A.* Pursuant to Rule 54(d)(1)(C)(8), Gordon Paving is entitled to an award, as a matter of right, of \$2,500.00

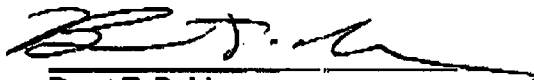
DEFENDANTS' MEMORANDUM IN SUPPORT
OF MOTION FOR AWARD OF ATTORNEY FEES AND COSTS-4

for reasonable expert witness fees. Also, pursuant to Rule 54(d)(1)(C)(9), Gordon Paving is entitled to \$278.56. Gordon Paving is further entitled to discretionary costs totaling \$854.01. *See Counsel Aff. at Ex. A.* In total, Gordon Paving is seeking \$2911.16 in costs as a matter of right and \$854.01 in discretionary costs, for a total of \$3765.17.

III. CONCLUSION

Gordon Paving is the prevailing party in the instant proceeding. Idaho law requires that this Court award Gordon Paving its attorney fees and costs. Gordon Paving requests this Court award it \$2911.16 in costs as a matter of right, \$854.01 in discretionary costs, and attorney fees of \$21,512.00, for a total of costs and fees of \$25,277.17.

DATED this 11th day of September, 2014.



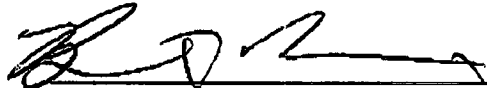
Brent T. Robinson
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2014, I caused to be served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

Bradley J. Dixon, Esq.
Kersti H. Kennedy, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard,
Suite 1900
Boise, Idaho 83702

- ☐ U.S. Mail, Postage Prepaid
☐ Facsimile (208) 389-9040
☒ E-mail *bjdixon@stoel.com*
☐ Special handling _____



Brent T. Robinson

132

Brent T. Robinson, ISB No. 1932
 ROBINSON & TRIBE
 Attorneys at Law
 P. O. Box 396
 Rupert, Idaho 83350
 Telephone (208) 436 4717
 Facsimile (208) 436-6804
 btr@idlawfirm.com

DISTRICT COURT
 TWIN FALLS, IDAHO

2014 SEP 11 PM 3:54

BY _____
 SP _____

Attorneys for defendants:
 Northwest Sand & Gravel, Inc.,
 Gordon Paving Company, Inc., and
 Blackrock Land Holdings, LLC

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

vs.

NORTHWEST SAND & GRAVEL, INC.,
 an Idaho corporation; GORDON PAVING
 COMPANY, INC., an Idaho corporation;
 BLACKROCK LAND HOLDINGS, LLC,
 an Idaho limited liability company; TOWN
 AND COUNTRY BANK, INC.; and FIRE
 SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 2012-2731

**AFFIDAVIT OF COUNSEL IN
 SUPPORT OF DEFENDANTS' MOTION
 FOR AWARD OF ATTORNEY FEES
 AND COSTS**

STATE OF IDAHO)
 ss.
 County of Minidoka)

BRENT T. ROBINSON, being first duly sworn upon oath, deposes and states as

follows:

AFFIDAVIT OF COUNSEL IN SUPPORT OF DEFENDANTS'
 MOTION FOR AWARD OF ATTORNEY FEES AND COSTS-1

1. That I am an attorney licensed to practice law in the State of Idaho, and that I represent the Defendants, Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc., and Blackrock Land Holdings, LLC, hereafter "Gordon Paving."

2. That I am over the age of eighteen, and an attorney with the law firm Robinson & Tribe, and have been engaged in the practice of law in Rupert, Idaho since my admission to the Idaho State Bar ("Bar") in 1976. As such I am personally familiar with the facts and circumstances stated herein. I am also acquainted with the rates charged by attorneys defending similar civil cases in Twin Falls County.

3. As a result of my years of experience litigating cases, I am familiar with the rates charged and with the amount of fees that are typically incurred in the prosecution or defense of a dispute for an action pending in Twin Falls County and the State of Idaho.

4. I am personally aware of the professional services rendered in this action, the costs incurred in preparing the prosecution of this case and the amount of time expended by attorneys of this firm in the prosecution of the claims brought by parties as set forth herein. The amount of costs and attorney fees expended by Gordon Paving and, therefore requested by Gordon Paving, are \$2911.16 in costs as a matter of right, \$854.01 in discretionary costs, and attorney fees of \$21,512.00, for a total of costs and fees of \$25,277.17 as detailed herein as **Exhibit A.**

5. The fee arrangement with our client for attorney fees was based on an hourly rate for services rendered, taking into account the service rendered, the expertise of the attorneys involved, and the time spent in completing each task. Pursuant to Robinson & Tribe's agreement with Gordon Paving, Gordon Paving agreed to pay for the time of attorney Brent T. Robinson at the hourly rate of \$200.00. Gordon Paving also agreed to pay for the time of attorney W. Reed

Cotten at the hourly rate of \$120.00. Gordon Paving also agreed to pay both attorneys half their hourly rate for travel.

6. Brent T. Robinson is a partner at Robinson & Tribe and has been practicing law in the state and federal courts of Idaho since his admission to the Bar in 1976. W. Reed Cotten is an associate at Robinson & Tribe and has been practicing law in the state courts of Idaho since his admission to the Bar in 2012.

7. Attached hereto as Exhibit A is a true and correct copy of an itemization of attorney time charged to Gordon Paving for the prosecution and defense of the claims and defenses raised in this proceeding, broken out by dates, a description of services rendered, the hourly rate charged for each timekeeper, and the hours charged for the tasks and dates so identified. These charges per time keeper are summarized as follows and fully set forth on Exhibit A attached hereto and incorporated herein by this reference:

Timekeeper	Hourly Rate	Total Hours	Total Fees
Brent T. Robinson	\$200.00	60.5	\$12,100.00
Brent T. Robinson	\$100.00	4	\$400.00
W. Reed Cotten	\$120.00	72.6	\$8,712.00
W. Reed Cotten	\$60.00	5	\$300.00
Total Fees			\$21,512.00

8. The legal basis for Defendants' Motion for an Award of Attorney fees are set forth in its Memorandum in Support of Defendants' Motion for Award of Attorney fees and Costs against Plaintiff filed contemporaneously herewith. The fees charged by Robinson & Tribe constitute reasonable attorney fees which are necessarily incurred in the prosecution and

defense of the claims and were actually and necessarily performed. This affidavit is submitted in compliance with Idaho Code Sections 12-120(3) and 12-121 and Rule 54(e)(3) of the Idaho Rules of Civil Procedure.

9. I hereby certify pursuant to Rule 54(d)(5) of the Idaho Rules of Civil Procedure that the costs and attorney fees claimed by Gordon Paving are in accordance with Rules 54(d) and (e) of the Idaho Rules of Civil Procedure.

10. Exhibit A was obtained from the business records of my law firm as they are kept in the ordinary course.

Further your affiant sayeth naught.

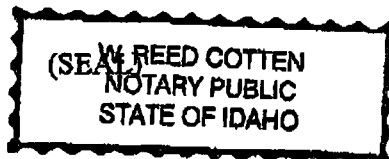


Brent T. Robinson
Attorney for the Plaintiff

SUBSCRIBED AND SWORN TO before me this 11th day of September 2014.



Notary Public for Idaho
Residing at *Declo, ID*
My commission expires: *9/23/2019*

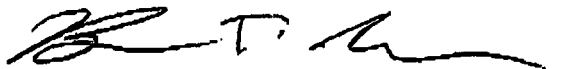


CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2014, I caused to be served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

Bradley J. Dixon, Esq.
Kersti H. Kennedy, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard,
Suite 1900
Boise, Idaho 83702

☐ U.S. Mail, Postage Prepaid
☐ Facsimile (208) 389-9040
☒ E-mail *bjdixon@stoel.com*
☐ Special handling _____


Brent T. Robinson 1

Robinson & Tribe - Client Summary

Date	Matter	Description	Rate/ Unit Price	Billable Time/ Cost Price	Bill Amt/ Sell Price
Gordon Paving Co/Brian Hansen					
Brent Robinson					
02/13/2014	Agstar	tel.conf. w/Brian Hansen regarding redemption and deficiency--RE: Ag Star	\$200.00 hr	0.6	\$120.00
02/25/2014	Agstar	Talked to client re redemption rights deficiency amount and property to be sold	\$200.00 hr	0.4	\$80.00
02/26/2014	Agstar	Motion to continue deficiency hearing	\$200.00 hr	1.5	\$300.00
03/06/2014	Agstar	Sent to client drafts of discovery responses	\$200.00 hr	1.8	\$360.00
03/10/2014	Agstar	Discovery sent to client from Ag Star	\$200.00 hr	0.5	\$100.00
03/12/2014	Agstar	Hearing re deficiency Judgment and email over miscellaneous matters	\$200.00 hr	1.2	\$240.00
03/14/2014	Agstar	letter to Brian Hansen about Obtaining the property appraised	\$200.00 hr	0.3	\$60.00
03/28/2014	Agstar	Letter reg: discovery is due	\$200.00 hr	0.2	\$40.00
05/09/2014	Agstar	Sent out 5 depositions notices to client	\$200.00 hr	1	\$200.00
05/23/2014	Agstar	Draft of discovery	\$200.00 hr	1	\$200.00
05/28/2014	Agstar	Prep- property value hearing; Talked to Brian Hansen, Ron Clark and others--RE: Ag Star	\$200.00 hr	2.4	\$480.00
05/29/2014	Agstar	prep-information for analysis; Further preparation re: value hearing--Re: Ag Star	\$200.00 hr	1.6	\$320.00
06/06/2014	Agstar	Worked on Agstar Exhibits	\$200.00 hr	2	\$400.00
06/06/2014	Agstar	Worked on Agstar Exhibits	\$200.00 hr	0.3	\$60.00
06/10/2014	Agstar	Talked to Brian & prepared for value hearing	\$200.00 hr	2	\$400.00
06/11/2014	Agstar	Additional preparation for hearing	\$200.00 hr	1.5	\$300.00
06/12/2014	Agstar	Met with Brian; worked on questions for appraisal & reviewed appraisal	\$200.00 hr	5	\$1,000.00
06/13/2014	Agstar	Evidentiary hearing reg: value	\$200.00 hr	6	\$1,200.00
06/13/2014	Agstar	Travel to and from hearing reg: value	\$100.00 hr	2	\$200.00
06/20/2014	Agstar	Sent client Ntc of Hearing for 2 day trial	\$200.00 hr	0.2	\$40.00
07/02/2014	Agstar	Worked on Exhibits	\$200.00 hr	0.6	\$120.00
07/16/2014	Agstar	tel.conf. w/Brian Hansen about use of David Coats and other preparation for hearing--RE: Ag Star	\$200.00 hr	0.4	\$80.00

EXHIBIT A**1 of 4**

07/31/2014	Agstar	Prep-follow up on transcript-- RE: Ag Star	\$200.00 hr	0.2	\$40.00
08/04/2014	Agstar	tel.conf. w/John Cox--RE: Ag Star	\$200.00 hr	0.8	\$160.00
08/11/2014	Agstar	preparation for last day of trial-- RE: Ag Star	\$200.00 hr	2	\$400.00
08/12/2014	Agstar	tel.conf. w/John Cox and Brian Hansen; Prepared closing and questions for witnesses--RE: Ag Star	\$200.00 hr	5.5	\$1,100.00
08/13/2014	Agstar	attend trial; Preparation for trial-- RE: Ag Star	\$200.00 hr	9	\$1,800.00
08/13/2014	Agstar	travel time to trial--RE: Ag Star	\$100.00 hr	2	\$200.00
08/14/2014	Agstar	Prepared closing argument--RE: Ag Star	\$200.00 hr	2	\$400.00
08/18/2014	Agstar	Dictated closing argument--RE: Ag Star	\$200.00 hr	3.5	\$700.00
08/19/2014	Agstar	Revised closing argument; Further work on closing argument--RE: Ag Star	\$200.00 hr	2	\$400.00
08/21/2014	Agstar	review and made changes to closing argument--RE: Ag Star	\$200.00 hr	1.5	\$300.00
08/25/2014	Agstar	conf. w/client and finalized closing argument--RE: Ag Star	\$200.00 hr	3.5	\$700.00

Total Labor For Brent Robinson

64.5

\$12,500.00

Date	Matter	Description	Rate/ Unit Price	Billable Time/ Cost Price	Bill Amt/ Sell Price
Gordon Paving Co/Brian Hansen					
William Cotton					
04/11/2014	Agstar	draft discovery responses with Hansens	\$120.00 hr	2.5	\$300.00
04/11/2014	Agstar	file and prepare documents for discovery responses	\$120.00 hr	0.5	\$60.00
04/21/2014	Agstar	coordinate new date for deposition	\$120.00 hr	0.2	\$24.00
04/21/2014	Agstar	coordinate new date for deposition	\$120.00 hr	0.2	\$24.00
05/12/2014	Agstar	phone calls and emails about hearing and upcoming deposition	\$120.00 hr	0.5	\$60.00
05/12/2014	Agstar	prepare for deposition of Brian Hansen	\$120.00 hr	1.3	\$156.00
05/13/2014	Agstar	attend deposition of Brian Hansen	\$120.00 hr	2.5	\$300.00
05/28/2014	Agstar	prepare for deficiency judgment hearing (review engineering studies and find witness)	\$120.00 hr	2	\$240.00
05/29/2014	Agstar	review quality studies	\$120.00 hr	1	\$120.00
05/29/2014	Agstar	phone call with Jared Bragg to discuss engineering study	\$120.00 hr	0.5	\$60.00
06/02/2014	Agstar	review MTT and Harper Leavitt reports	\$120.00 hr	2	\$240.00

EXHIBIT A

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06/02/2014	Agstar	phone calls to Jared Bragg and David Kram about expert testimony for Gordon Paving	\$120.00 hr	0.6	\$72.00
06/02/2014	Agstar	phone call with Brian	\$120.00 hr	0.1	\$12.00
06/05/2014	Agstar	phone call with Judge Stoker's clerk	\$120.00 hr	0.2	\$24.00
06/05/2014	Agstar	phone conference	\$120.00 hr	0.2	\$24.00
06/10/2014	Agstar	phone calls with Brian	\$120.00 hr	0.3	\$36.00
06/10/2014	Agstar	phone conference with Chris Park	\$120.00 hr	0.3	\$36.00
06/11/2014	Agstar	analyze Stanger discount cash flow analysis	\$120.00 hr	2.5	\$300.00
06/12/2014	Agstar	hearing preparation (organize exhibits, speak with witnesses, discuss strategy, etc.)	\$120.00 hr	10	\$1,200.00
06/13/2014	Agstar	prepare to defend against Agstar's Motion In Limine	\$120.00 hr	1.5	\$180.00
06/13/2014	Agstar	Attend deficiency judgment hearing	\$0.00 hr	5.5	\$0.00
07/03/2014	Agstar	phone conference	\$120.00 hr	0.1	\$12.00
07/03/2014	Agstar	phone conference with Cox	\$120.00 hr	0.3	\$36.00
07/03/2014	Agstar	draft discovery response	\$120.00 hr	2	\$240.00
07/07/2014	Agstar	third supp. discovery response	\$120.00 hr	1	\$120.00
07/16/2014	Agstar	phone conference with Brian	\$120.00 hr	0.2	\$24.00
07/16/2014	Agstar	phone conference with Chris Park	\$120.00 hr	0.2	\$24.00
07/16/2014	Agstar	coordinate depositions	\$120.00 hr	0.5	\$60.00
07/16/2014	Agstar	revise I & Rs in aid of execution	\$120.00 hr	0.5	\$60.00
07/17/2014	Agstar	phone conference (titles)	\$120.00 hr	0.3	\$36.00
07/21/2014	Agstar	phone conference with Chris Park	\$120.00 hr	0.2	\$24.00
07/22/2014	Agstar	phone conference with Brian about depositions	\$120.00 hr	0.2	\$24.00
07/24/2014	Agstar	phone conference	\$120.00 hr	0.1	\$12.00
07/24/2014	Agstar	phone conference with Chris Park	\$120.00 hr	0.2	\$24.00
07/24/2014	Agstar	coordinate depositions	\$120.00 hr	1.2	\$144.00
07/28/2014	Agstar	coordinate depositions (Coats, Cox, and Ellison)	\$120.00 hr	0.7	\$84.00
07/28/2014	Agstar	phone conference with Chris Park	\$120.00 hr	0.2	\$24.00
07/29/2014	Agstar	attend deposition of Chris Park	\$120.00 hr	1.5	\$180.00
07/29/2014	Agstar	Travel to Boise for Deposition of Chris Park	\$60.00 hr	5	\$300.00
08/01/2014	Agstar	office conference with Dave Coats	\$120.00 hr	1	\$120.00
08/04/2014	Agstar	phone conference	\$120.00 hr	0.1	\$12.00
08/05/2014	Agstar	prepare for depositions	\$120.00 hr	0.5	\$60.00
08/05/2014	Agstar	attend depositions	\$120.00 hr	3.5	\$420.00
08/11/2014	Agstar	email re: exhibits and closing arguments	\$120.00 hr	0.3	\$36.00
08/11/2014	Agstar	Phone conference with court reporter	\$120.00 hr	0.2	\$24.00
08/11/2014	Agstar	review deposition transcripts	\$120.00 hr	0.5	\$60.00
08/12/2014	Agstar	trial preparation	\$120.00 hr	4.5	\$540.00

EXHIBIT A

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08/13/2014	Agstar	trial prep	\$120.00 hr	1.5	\$180.00
08/13/2014	Agstar	attend trial	\$120.00 hr	6.5	\$780.00
08/13/2014	Agstar	Travel to Twin Falls for trial	\$0.00 hr	1.5	\$0.00
08/15/2014	Agstar	draft closing argument	\$120.00 hr	1	\$120.00
08/20/2014	Agstar	revise closing argument (discount cash flow)	\$120.00 hr	1.5	\$180.00
08/21/2014	Agstar	draft closing argument	\$120.00 hr	7	\$840.00
08/22/2014	Agstar	revise closing argument	\$120.00 hr	5	\$600.00
08/25/2014	Agstar	revise closing argument	\$120.00 hr	1.2	\$144.00
Total Labor For William Cotten				84.5	\$9,012.00

Date	Matter	Description	Rate/ Unit Price	Billable Time/ Cost Price	Bill Amt/ Sell Price
Gordon Paving Co/Brian Hansen					
Brent Robinson					
2/13/2014	Agstar	long distance call; 8 mins.	\$16.00 ea	\$16.00	\$16.00
2/25/2014	Agstar	long distance call; 5 mins.	\$10.00 ea	\$10.00	\$10.00
2/28/2014	Agstar	long distance call; 9 mins.	\$18.00 ea	\$18.00	\$18.00
3/12/2014	Agstar	long distance call; 5 mins.	\$10.00 ea	\$10.00	\$10.00
5/28/2014	Agstar	Copies 396 @ .15	\$59.40 ea	\$59.40	\$59.40
5/29/2014	Agstar	Color Copies 344 @ .50	\$172.00 ea	\$172.00	\$172.00
6/10/2014	Agstar	long distance call; 9 mins.	\$18.00 ea	\$18.00	\$18.00
6/12/2014	Agstar	Copies 300 @ .15	\$45.00 ea	\$45.00	\$45.00
6/13/2014	Agstar	Mileage 100 miles @ .60	\$60.00 ea	\$60.00	\$60.00
7/2/2014	Agstar	long distance call; 2 mins. gma	\$4.00 ea	\$4.00	\$4.00
7/8/2014	Agstar	Transcript fee for Hrg on 6/13/14	\$225.00 ea	\$225.00	\$225.00
7/29/2014	Agstar	Expert mileage to deposition 442 miles @ .30	\$132.60 ea	\$132.60	\$132.60
8/7/2014	Agstar	Remainder of Transcript fee	\$215.00 ea	\$215.00	\$215.00
8/12/2014	Agstar	Tucker & Assoc. cost for Chris A. Park depo. on 7/29/14	\$81.85 ea	\$81.85	\$81.85
8/19/2014	Agstar	Cost of John Cox Depo Transcript	\$74.40 ea	\$74.40	\$74.40
8/19/2014	Agstar	Cost of Devan Ellison Depo Transcript	\$122.31 ea	\$122.31	\$122.31
8/25/2014	Agstar	Postage	\$1.61 ea	\$1.61	\$1.61
8/25/2014	Agstar	Expert witness fee Coats	\$500.00 ea	\$500.00	\$500.00
8/25/2014	Agstar	Expert witness fee Kirkham	\$500.00 ea	\$500.00	\$500.00
8/25/2014	Agstar	Expert witness fee Ellison	\$500.00 ea	\$500.00	\$500.00
8/25/2014	Agstar	Expert witness fee Cox	\$500.00 ea	\$500.00	\$500.00
8/25/2014	Agstar	Expert witness fee Park	\$500.00 ea	\$500.00	\$500.00
Total Expense For Brent Robinson				\$3,765.17	\$3,765.17

Date	Matter	Description	Rate/ Unit Price	Billable Time/ Cost Price	Bill Amt/ Sell Price
Gordon Paving Co/Brian Hansen					
William Cotten					
5/13/2014	Agstar	Travel to Boise for deposition of Brian Hansen	\$0.60/mile	\$198.00	\$198.00
6/2/2014	Agstar	Postage	\$0.48 ea	\$0.48	\$0.48
7/29/2014	Agstar	Travel to and from Boise for Deposition of Chris Park	\$0.60/mile	\$198.00	\$198.00
Total Expense For William Cotten				\$396.48	\$396.48

EXHIBIT A

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Brent T. Robinson, ISB No. 1932
 ROBINSON & TRIBE
 Attorneys at Law
 P. O. Box 396
 Rupert, Idaho 83350
 Telephone (208) 436-4717
 Facsimile (208) 436-6804
 btr@idlawfirm.com

DISTRICT COURT
Fifth Judicial District
 County of Twin Falls - State of Idaho

SEP 15 2014

By _____ 4:10 P.M.
 _____ Clerk
 _____ Deputy Clerk

Attorneys for defendants
 Northwest Sand & Gravel, Inc.,
 Gordon Paving Company, Inc., and
 Blackrock Land Holdings, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

vs.

NORTHWEST SAND & GRAVEL, INC.,
 an Idaho corporation; GORDON PAVING
 COMPANY, INC., an Idaho corporation;
 BLACKROCK LAND HOLDINGS, LLC,
 an Idaho limited liability company; TOWN
 AND COUNTRY BANK, INC.; and FIRE
 SERVICE OF IDAHO, INC.

Defendants

Case No. CV-12-2731

MEMO IN OPPOSITION TO PLAINTIFF'S
 MOTION FOR ORDER DIRECTING
 DEFENDANTS TO TRANSFER TITLES
 OF VEHICLES AND FOR COMFORT
 ORDER RE PERSONAL PROPERTY
 AUCTION

COME NOW Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc., and
 Blackrock Land Holdings, LLC, defendants in the above-entitled cause of action, hereafter
 "Gordon Paving," by and through their attorney of record, Brent T. Robinson of the firm
 Robinson & Tribe, and provide to the Court their memorandum in opposition to Plaintiff's

Memo in Opposition to Plaintiff's Motion - 1

motion as follows:

INTRODUCTION

Pursuant to the June 19, 2013, judgment and decree of foreclosure entered by the Court, Plaintiff foreclosed on its interest in collateral owned by Gordon Paving. At the time of the decree the amount owed by to Plaintiff was \$9,813,340. Accordingly, Plaintiff elected to sell the foreclosed real estate by a Sheriff's Auction. At that auction Plaintiff purchased the real estate by credit bid for \$7,200,000.00. Thereafter, Plaintiff brought an action for a deficiency judgment against Gordon Paving. The Court denied that motion based on its finding that the real estate was worth at least \$11,710,105 at the time of the decree and in accordance with Idaho Code § 6-108, which limits the amount of a deficiency judgment to the deference between the debt owed and the fair market value of the property at the time of the decree. In effect Plaintiff foreclosed on \$11.7 million worth of property to satisfy a \$9.8 million debt. Through its motion, Plaintiff now seeks to sell additional Gordon Paving property. As discussed below Plaintiff should be estopped from selling any additional collateral and should return all remaining collateral to Gordon Paving.

ARGUMENT

Under Idaho law "[o]nly if there is a deficiency, will the mortgagee be allowed to pursue the other assets of the mortgage debtor." *Elliott v. Darwin Neibaur Farms*, 69 P.3d 1035, 1042 (Idaho 2003) (quoting *Fed. Land Bank of Spokane v. Parsons*, 796 P.2d 533, 536 (Idaho App. 1990)). Thus, absent a deficiency judgment a mortgagee cannot touch the other assets of the mortgagor. This rule reflects what fairness would dictate: if a mortgagee seizes assets whose value is sufficient to satisfy the mortgagor's debt, then they are estopped from taking additional property from the mortgagor.

Memo in Opposition to Plaintiff's Motion - 2

In the present case the Court denied Plaintiff's motion for a deficiency judgment. The logic behind this decision is simple: Plaintiff foreclosed on property that had a value that exceeded the debt owed to it and accordingly it is not entitled to take anything else from Gordon Paving. This logic should also apply to other collateral that secured the bonds issued by Gordon Paving. Since the Plaintiff already foreclosed on and sold property that should have been sufficient to satisfy Gordon Paving's debt, fairness should prevent it from selling any additional collateral.

CONCLUSION

Since Plaintiff has already taken property with sufficient value to satisfy all debts owed to it by Gordon Paving the Court should deny its motion and require Plaintiff to return all remaining collateral to Gordon Paving. Additionally, if Gordon Paving is found to be the prevailing party in this matter, then it requests that the Court award the Defendants their attorney's fees and costs in this matter.

DATED this 15th day of September, 2014.

ROBINSON & TRIBE

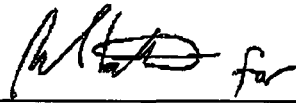
By: M. T. Robinson
Brent T. Robinson
Attorneys for Defendants
Northwest Sand & Gravel, Inc.,
Gordon Paving Company, Inc., and
Blackrock Land Holdings, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2014, I caused to be served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

Bradley J. Dixon, Esq.
Kersti H. Kennedy, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard,
Suite 1900
Boise, Idaho 83702

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☐ Facsimile (208) 389-9040
☒ E-mail *bjdixon@stoel.com*
☐ Special handling _____



Brent T. Robinson

132

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 SEP 17 AM 9:58

BY _____ CLERK
 f DEPUTY

Bradley J. Dixon, ISB No. 6167
Email: *bjdixon@stoel.com*
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**REPLY TO DEFENDANTS' OPPOSITION
TO ORDER DIRECTING DEFENDANTS
TO TRANSFER TITLES OF VEHICLES
AND FOR COMFORT ORDER RE
PERSONAL PROPERTY AUCTION**

Plaintiff AgStar Financial Services, ACA ("AgStar"), by and through its attorneys Stoel
Rives, LLP, hereby submits its Reply To Defendants' Memo In Opposition For Order Directing
Defendants To Transfer Titles Of Vehicles And For Comfort Order Re Personal Property
Auction.

**REPLY TO DEFENDANTS' OPPOSITION TO ORDER DIRECTING DEFENDANTS
TO TRANSFER TITLES OF VEHICLES AND FOR COMFORT ORDER RE
PERSONAL PROPERTY AUCTION- 1**

77100380.1 0047071-00001

I. INTRODUCTION

AgStar requests that the Court approve the planned Article 9 sale of the personal property collateral at-issue in this case, and enter an order compelling transfer of the vehicle titles to AgStar. AgStar filed this motion in part because it anticipated an eleventh-hour objection by the Defendants ("Gordon Paving") to the sale--such late objections and problems have become unfortunately commonplace when dealing with Gordon Paving. Despite having months' notice of the impending personal property sale, and despite standing by for almost a year while AgStar spent time and money maintaining and keeping secure the personal property collateral, Gordon Paving did not object to AgStar's actions with respect to that property until yesterday.

Putting that aside, the Court should enter an order allowing AgStar to sell the personal property collateral at auction because: 1) Idaho's anti-deficiency statute does not bar AgStar from proceeding against the personal property collateral to satisfy its indebtedness above the amount recovered by the credit bid; and 2) Idaho's Article 9 allows for sale of the personal property collateral at auction. The Court should further order Gordon Paving to transfer titles to the vehicles to avoid the time and expense of AgStar litigating the title issue with the Department of Transportation.

II. ARGUMENT

A. **Idaho's Anti-Deficiency Statute Only Applies to Actions Against the Debtors, Not Against Remaining Collateral.**

Idaho's anti-deficiency statute bars recovery of a deficiency judgment greater than the mortgage indebtedness plus costs of foreclosure and sale, minus the reasonable value of the property:

No court in the state of Idaho shall have jurisdiction to enter a deficiency judgment in any case involving a foreclosure of a mortgage on real property in any amount greater than the difference between the mortgage indebtedness, as

**REPLY TO DEFENDANTS' OPPOSITION TO ORDER DIRECTING DEFENDANTS
TO TRANSFER TITLES OF VEHICLES AND FOR COMFORT ORDER RE
PERSONAL PROPERTY AUCTION- 2**

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determined by the decree, plus costs of foreclosure and sale, and the reasonable value of the mortgaged property, to be determined by the court in the decree upon the taking of evidence of such value.

I.C. § 6-108.

Gordon Paving contends that this anti-deficiency statute bars AgStar from selling the personal property collateral to apply to the remaining indebtedness, because AgStar holds property with a reasonable value exceeding the indebtedness. Gordon Paving, however, has provided no authority in support of the position that the reasonable value of the real property, rather than the credit bid, is to be applied to the total indebtedness before other collateral can be sold to satisfy the indebtedness.

While it does not appear that there are any Idaho cases on point, other courts that have addressed the issue have held that for the purposes of selling additional collateral, the anti-deficiency statute does not apply.

In *In re Merrick*, a case from the U.S. Bankruptcy Court, District of Utah (Central Division), the debtors executed a note in favor of a bank, secured by both a trust deed on a piece of commercial real estate, as well as a trust deed on the debtors' personal residence. 483 B.R. 236, 237 (2012). After the creditor sold the commercial property, and won the auction with a credit bid that did not satisfy the total indebtedness, the creditor filed a claim in the bankruptcy for the remaining amount due and began pursuing foreclosure against the residence. *Id.* at 238-39. The debtors argued that the creditor was barred from doing this by Utah's anti-deficiency statute, because the fair market value of the commercial residence exceeded the amount of the total indebtedness, and therefore the creditor could not pursue recovery on any remaining collateral. *Id.* at 239.

The court framed the issue as follows:

**REPLY TO DEFENDANTS' OPPOSITION TO ORDER DIRECTING DEFENDANTS
TO TRANSFER TITLES OF VEHICLES AND FOR COMFORT ORDER RE
PERSONAL PROPERTY AUCTION- 3**

77100380.1 0047071-00001

When a note is secured by two pieces of collateral, and the first piece of collateral is purchased by credit bid for an amount less than the total indebtedness under the note, does [Utah's "Anti-Deficiency Statute"] require the secured creditor to subtract the fair market value of the sold collateral from the total indebtedness before pursuing the second piece of collateral?

Id. Utah's anti-deficiency statute is very similar to Idaho's, stating, in part:

The court may not render [a deficiency] judgment for more than the amount by which the amount of the indebtedness with interest, costs, and expenses of sale, including trustee's and attorney's fees, exceeds the fair market value of the property as of the date of the sale.

Utah Code § 57-1-32.

The court held that the anti-deficiency statute did not bar recovery against the second piece of collateral, stating that the creditor "is permitted to pursue a claim against the [remaining collateral] for the remaining indebtedness under the Note without first subtracting the fair market value of the [first piece of collateral] because such a claim is not an 'action' under Utah's Anti-Deficiency Statute." *Id.* at 241.

This case is far from anomalous, and its reasoning is based on a line of cases from the Utah Supreme Court and the courts of other jurisdictions. *Id.* (citing *Phillips v. Utah State Credit Union*, 811 P.2d 174 (Utah 1991); *Dreyfuss v. Union Bank of California*, 24 Cal.4th 400, 11 P.3d 383 (Cal. S.C. 2000) ("a creditor may proceed seriatim in foreclosing against multiple items of collateral without commencing a judicial action to determine the fair market value of each item sold, and crediting that amount to the debt, before proceeding with foreclosure sales of any additional collateral"); *Donovick v. Seattle-First Nat. Bank*, 111 Wash.2d 413, 757 P.2d 1378 (Wash. S.C. 1988) (same conclusion under Washington's anti-deficiency statute); *see also Pfeiffer v. Morgan Stanley Credit Corp.*, 922 F. Supp. 2d 828, 832 (D. Ariz. 2012). AgStar found no cases holding oppositely.

**REPLY TO DEFENDANTS' OPPOSITION TO ORDER DIRECTING DEFENDANTS
TO TRANSFER TITLES OF VEHICLES AND FOR COMFORT ORDER RE
PERSONAL PROPERTY AUCTION- 4**

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The crux of these cases is that serial recovery of a debt on collateral is not the pursuit of a deficiency action against the debtor *personally*, and thus the anti-deficiency statute does not apply. Because the anti-deficiency statute does not apply, the *credit bid* is applied to the total indebtedness rather than the court's finding of reasonable value. *Merrick* at 242 (the creditor "may assert a claim for the total indebtedness under the Note minus its credit bid on the Commercial Property against the Residential Property.")

Idaho's anti-deficiency statute, by its language, only applies to actions sought against the debtor personally for an additional deficiency, not against the collateral securing the indebtedness.¹ AgStar failed to gain a deficiency judgment against Gordon Paving *personally*, which would have allowed it to execute on other property belonging to Gordon Paving that did not secure the debt. But, AgStar may still proceed against the remaining collateral to the extent that the credit bid has failed to satisfy the total indebtedness. In the Court's memorandum decision of August 28, 2014, the Court noted that the total indebtedness at the time of the decree was \$9,813,340.00. Since the decree, AgStar has incurred further costs and fees, and the judgment has earned interest. The credit bid was only \$7.2 million and falls far short of making AgStar whole. For that reason, the Court should allow AgStar to proceed against the remaining collateral.

B. AgStar May Sell the Personal Property Collateral to Satisfy the Remaining Indebtedness Beyond the \$7.2 Million Credit Bid in an Article 9 Sale.

Under Idaho's Uniform Commercial Code Article 9, AgStar may choose to execute, pursuant to the judgment and decree of foreclosure, on the personal property collateral through

¹ The error in Gordon Paving's argument—that AgStar must subtract the reasonable value of the property rather than the credit bid—is shown when one thinks of the redemption. If Gordon Paving redeems for \$7.2 million plus costs, fees, and interest, and AgStar is not allowed to proceed against the additional collateral, AgStar's indebtedness will not be fully satisfied.

**REPLY TO DEFENDANTS' OPPOSITION TO ORDER DIRECTING DEFENDANTS
TO TRANSFER TITLES OF VEHICLES AND FOR COMFORT ORDER RE
PERSONAL PROPERTY AUCTION- 5**

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the sheriff, or may choose to sell by auction under the provisions of Article 9. *See* I.C. § 28-9-604; 28-9-601; *Snake River Equipment Co. v. Christensen*, 107 Idaho 541 (Ct. App. 1984). As noted in AgStar's opening brief, AgStar has chosen to use Masters Auction Company to sell the personal property collateral, as that collateral consists of a host of small items, over two dozen vehicles, inventory, and equipment. AgStar had difficulties in working with the sheriff due to their logistical requirements, and sought the help of Masters Auction. AgStar also anticipates that the sale will garner a higher return than if the sheriff sold the property, due to the Masters' superior advertising abilities, and ability to properly market and package the collateral.

C. The Court Should Authorize the Sale of the Personal Property Collateral and Should Require Gordon Paving to Sign Over the Titles to Facilitate That Sale.

As discussed, AgStar may properly proceed against the remaining collateral to satisfy the indebtedness above the amount of the credit bid, and may do so in an Article 9 sale. AgStar has requested the Court's approval of these actions, as it anticipated objections by Gordon Paving, which were not forthcoming.

AgStar also seeks a court order requiring Gordon Paving to sign over the remaining vehicle titles. As outlined in the initial brief, the Idaho Transportation Department ("ITD") has refused transfer of the titles without Gordon Paving's authorization, despite provisions in the Idaho Code that allow for transfer of title to the secured party, or the secured party's transferee, upon default. *See* I.C. § 49-514, § 28-9-619. Thus, to avoid another round of litigation involving ITD, AgStar requests an order requiring Gordon Paving to authorize transfer to AgStar so it may sell the vehicles at auction.

III. CONCLUSION

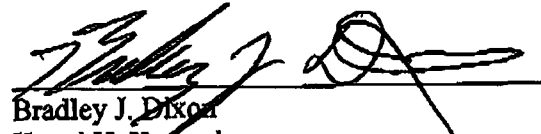
For the above reasons, the Court should hold that AgStar may proceed against the remaining personal property collateral to the extent the total indebtedness exceeds the credit bid

**REPLY TO DEFENDANTS' OPPOSITION TO ORDER DIRECTING DEFENDANTS
TO TRANSFER TITLES OF VEHICLES AND FOR COMFORT ORDER RE
PERSONAL PROPERTY AUCTION- 6**

on the real property, and may use an Article 9 auction for this purpose. The Court should also order that Gordon Paving transfer title to the remaining vehicles that will be auctioned.

DATED: September 17 2014.

STOEL RIVES LLP



Bradley J. Dixon
Kersti H. Kennedy
Attorney for Plaintiff

**REPLY TO DEFENDANTS' OPPOSITION TO ORDER DIRECTING DEFENDANTS
TO TRANSFER TITLES OF VEHICLES AND FOR COMFORT ORDER RE
PERSONAL PROPERTY AUCTION- 7**

77100380.1 0047071-00001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of September, 2014, I served a true and correct copy of the foregoing **REPLY TO DEFENDANTS' OPPOSITION TO ORDER DIRECTING DEFENDANTS TO TRANSFER TITLES OF VEHICLES AND FOR COMFORT ORDER RE PERSONAL PROPERTY AUCTION-** in the above-entitled matter as follows:

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Attorneys for Defendants:
Northwest Sand & Gravel, Inc.
Gordon Paving Company, Inc.
Blackrock Land Holdings, LLC

☐ Via U.S. Mail
☒ Via Facsimile
☐ Via Overnight Mail
☐ Via Hand Delivery
☒ Via email

By:


Bradley J. Dixon
Kersti H. Kennedy

**REPLY TO DEFENDANTS' OPPOSITION TO ORDER DIRECTING DEFENDANTS
TO TRANSFER TITLES OF VEHICLES AND FOR COMFORT ORDER RE
PERSONAL PROPERTY AUCTION- 8**

77100380.1 0047071-00001

SEP 19 2014

By _____ /2:00 PM
Clerk
Deputy Clerk

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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

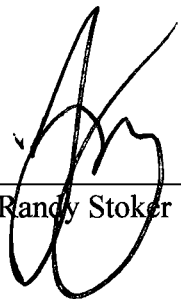
Case No. CV 12-2731

**ORDER APPROVING PERSONAL
PROPERTY COLLATERAL AUCTION**

This matter came before the Court on September 18, 2014 on Plaintiff's motion for Motion for Order Directing the Defendants to Transfer Title of Vehicles and for Comfort Order re Personal Property Auction. The Court held that the Plaintiff, AgStar Financial Services, ACA ("AgStar") is entitled to sell the Defendants' personal property collateral that it subject to AgStar's security interest via an Article 9 public auction conducted by Masters Auction Service,

Twin Falls, Idaho, on October 2, 2014. The Court also found that a number of vehicle titles are lost; however, the Court declined to order the Defendants to sign the titles over. Instead, the Court held that it will issue an order directing the Idaho Transportation Department, Department of Motor Vehicles to issue duplicate titles so that the auctioneer may transfer title to the purchasers of the vehicles at the auction.

DATED: September 19 2014.



Judge Randy Stoker

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of September, 2014, I served a true and correct copy of the foregoing **ORDER APPROVING PERSONAL PROPERTY COLLATERAL AUCTION** in the above-entitled matter as follows:

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Gordon Paving Company, Inc.
Blackrock Land Holdings, LLC*

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Attorneys for AgStar Financial Services, ACA

By:

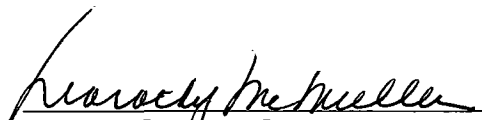

CLERK OF THE COURT

Exhibit A : VEHICLE SPREADSHEET Re: Titles Needed

Year	Make	Model	VIN	Lienholder
2000	GMC	SRA	1GTEC14W9YE183687	No
1994	Ford	F250	1FTHX26K5RKB67328	No
2008	Ford	F350	1FDWW35R48EA02507	No
1987	Dodge	TK	1B6MD3418HS432771	No
2003	Chevy	SLV	1GCHK23193F213270	No
1967	Ford	TK	F35YRB48024	Bank of America
1984	INTL	TK	1HSZEHURXEHA23336	Bank of America
1975	GMC	TK	TCY335S509745	Bank of America
2002	INTL	TK	1HTSLAAN92H500326	Bank of America
1981	Ford	TK	1FDNN70HXBVJ42098	Bank of America
2002	TRLK	TL	1TKC024212M098531	John Deere Construction & Forestry
1994	Ford	TK	1FDYY90R9RVA20158	Wells Fargo Equipment
2001	Chev	TK	4KBC4B1R21J804164	Wells Fargo Equipment

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 Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
 Fifth Judicial District
 County of Twin Falls - State of Idaho

SEP 24 2014

3:50 PM

By _____ Clerk
 _____ Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
 an Idaho corporation; GORDON PAVING
 COMPANY, INC., an Idaho Corporation;
 BLACKROCK LAND HOLDINGS, LLC,
 an Idaho limited liability company; TOWN
 AND COUNTRY BANK, INC.; and FIRE
 SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**MOTION TO DISALLOW
 DEFENDANTS' REQUEST FOR
 ATTORNEY'S FEES AND COSTS**

COMES NOW the Plaintiff, AgStar Financial Services, ACA by and through its attorney of record, pursuant to I.R.C.P. 54(d)(6), and moves the Court to disallow Defendants' fees and costs as set forth in their memorandum filed September 11, 2014. AgStar's motion is based on the pleadings and motions on file and the supporting memorandum filed contemporaneously.

**MOTION TO DISALLOW DEFENDANTS' REQUEST FOR ATTORNEY'S FEES
 AND COSTS - 1**

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DATED: September ²⁴, 2014.

STOEL RIVES LLP

Kersti H. Kennedy

Bradley J. Dixon
Kersti H. Kennedy
Attorney for Plaintiff

**MOTION TO DISALLOW DEFENDANTS' REQUEST FOR ATTORNEY'S FEES
AND COSTS - 2**

77083302.1 0047071-00001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of September, 2014, I served a true and correct copy of the foregoing **MOTION TO DISALLOW DEFENDANTS' REQUEST FOR ATTORNEY'S FEES AND COSTS** - in the above-entitled matter as follows:

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Email: BTR@idlawfirm.com

☐ Via U.S. Mail
☐ Via Facsimile
☒ Via Overnight Mail
☐ Via Hand Delivery
☒ Via email

Attorneys for Defendants:
Northwest Sand & Gravel, Inc.
Gordon Paving Company, Inc.
Blackrock Land Holdings, LLC

By:

Kersti H. Kennedy
Bradley J. Dixon
Kersti H. Kennedy

**MOTION TO DISALLOW DEFENDANTS' REQUEST FOR ATTORNEY'S FEES
AND COSTS - 3**

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DISTRICT COURT
Fifth Judicial District
 County of Twin Falls - State of Idaho

SEP 24 2014

By

3:50 PM

Clerk

Deputy Clerk

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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
 an Idaho corporation; GORDON PAVING
 COMPANY, INC., an Idaho corporation;
 BLACKROCK LAND HOLDINGS, LLC,
 an Idaho limited liability company; TOWN
 AND COUNTRY BANK, INC.; and FIRE
 SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**MEMORANDUM IN SUPPORT OF
 PLAINTIFF'S MOTION TO DISALLOW
 DEFENDANTS' REQUEST FOR
 ATTORNEY'S FEES AND COSTS**

Plaintiff AgStar Financial Services, ACA ("AgStar"), by and through its attorneys Stoel
 Rives, LLP, hereby submits this Memorandum In Support Of Plaintiff's Motion To Disallow
 Attorney's Fees And Costs.

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISALLOW
 DEFENDANTS' REQUEST FOR ATTORNEY'S FEES AND COSTS - 1**

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I. INTRODUCTION

The Defendants ("Gordon Paving") are not entitled to fees and costs for prevailing at the deficiency judgment hearing because the parties' agreement places liability for *all* attorney fees and costs of litigation with Gordon Paving, and, even if I.C. § 12-120(3) and I.R.C.P. 54(d)(1) apply, Gordon Paving is not the prevailing party under those provisions.

II. ARGUMENT

A. The Agreements Between Gordon Paving and AgStar Place Liability for Any Fees and Costs Arising out of Litigation on Gordon Paving.

Under Idaho law, if a contract contains an attorney fees provision, the terms of that provision establish the right to such fees. *Lamprecht v. Jordan, LLC*, 139 Idaho 182, 186, 75 P.3d 743, 747 (2003) (citing *Farm Credit Bank of Spokane v. Wissel*, 122 Idaho 565, 568-69, 836 P.2d 511, 514-15 (1992)).

Further, if a contract limits or disallows an award of fees, I.C. § 12-120 (the provision allowing fees generally in civil actions) cannot override that provision. In *Chittenden & Eastman*, a contract between a creditor and a guarantor provided that "[i]f any claim against the Guarantor(s) or Purchaser or both is referred to any attorney for collection, then the Guarantor(s) shall pay 15% (fifteen percent) of the amount of the claim as attorney's fees." 116 Idaho 981, 982, 783 P.2d 320, 321 (Ct. App. 1989) (internal quotation marks omitted). Based on this provision, the district court exhausted the fee award up to the 15 percent threshold. *Id.* The guarantors (the losing parties at the trial level) appealed on issues unrelated to fees. *Id.* The creditor won on appeal, and then requested an additional award of fees on appeal under I.C. § 12-120. *Id.* The Court of Appeals denied this request, holding that I.C. § 12-120 "does not override a valid agreement between the parties specifically limiting the dollar amount that may be claimed

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISALLOW
DEFENDANTS' REQUEST FOR ATTORNEY'S FEES AND COSTS - 2**

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and awarded.” *Id.* Because the district court had already awarded the creditor all that could be awarded under the agreement, the appellate court could award no more.

Similarly, an agreement that no fees will be awarded to a party also overrides any statutory provision for fees. In *Moore v. Omnicare, Inc.*, the Supreme Court affirmed the trial court’s denial of attorney fees to a prevailing party, based on a contract provision that required each party to bear its own costs, including attorney fees. 141 Idaho 809, 818-19, 118 P.3d 141, 150-51 (2005). The Supreme Court reasoned that “[a]s recognized by the Court of Appeals, a general entitlement to an award of attorney’s fees under I.C. § 12-120 will not override a valid agreement between parties which limits the dollar amount that may be claimed or awarded. In this case the parties contracted for a zero dollar amount or claim with respect to an award of attorney’s fees.” *Id.* (citation omitted).

The Supreme Court also clarified that, as with attorney fees, a contract regarding costs controls, rather than I.R.C.P. 54(d)(1). *Zenner v. Holcomb*, 147 Idaho 444, 452, 210 P.3d 552, 560 (2009). In *Zenner*, the district court awarded the prevailing party all of its costs, an award that was provided for in the contract between the parties, rather than analyzing the award under I.R.C.P. 54(d)(1). *Id.* On appeal, the Supreme Court affirmed the district court’s award of all costs regardless of whether they would be awarded under I.R.C.P. 54(d)(1), holding that “the general entitlement to costs under I.R.C.P. 54(d)(1) does not override a valid agreement.” *Id.*

Thus Idaho case law establishes a standard that “promotes the freedom of contract, which is a fundamental concept underlying the law of contracts and is an essential element of the free enterprise system.” *Id.* (internal quotation marks and citation omitted). The District of Minnesota, interpreting Idaho law on attorney fees, has reflected that “the Idaho Supreme Court has . . . determined that parties may contract away their statutory right to attorney’s fees

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION TO DISALLOW
DEFENDANTS’ REQUEST FOR ATTORNEY’S FEES AND COSTS - 3**

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altogether." *Novus Franchising, Inc. v. Oksendahl*, Nos. 07-1964, 07-1965, 2008 WL 835681, at *3 (D. Minn. Mar. 27, 2008) (citing *Moore*, 141 Idaho at 817-18, 118 P.3d at 149-50).

This is what has happened here—Gordon Paving has contracted away all statutory rights to an award of attorney fees and costs. The agreement between the parties places all liability for attorney fees and costs with Gordon Paving.

The bond purchase agreement dated December 2007 states:

Upon the occurrence of an Event of Default . . . Investor may pursue all rights and remedies available under each or any of the Bond Security Documents, as well as any rights and remedies at law, or in equity, which it deems advisable for the protection of its interests to collect and enforce payment, and such rights and remedies shall be cumulative, *The Issuer [Gordon Paving] shall pay all expenses, court costs and reasonable attorneys' fees incurred in connection with or arising out of any default hereunder.*

(Exhibit A to Complaint filed June 28, 2012, at ¶ 9 (emphasis added).)¹ This provision does not limit the award of costs and fees to AgStar only when it prevails; nor does it allow Gordon Paving to seek its costs and fees from AgStar. It provides that Gordon Paving will pay *all* costs and attorney fees incurred in connection with or arising out of a default, without regard to which party incurred them. The \$9 million bond corresponding to this agreement repeats the same phrase regarding fees. (Exhibit B to Complaint at ¶ 10.)

The second bond purchase agreement, dated April 2008, repeats this provision in identical language:

The Issuer shall pay all expenses, court costs and reasonable attorneys' fees incurred in connection with or arising out of any default hereunder.

(Exhibit F to Complaint at ¶ 8.) This provision is again mirrored in the actual bond dated April 2008. (Exhibit G to Complaint at ¶ 10.)

¹ Note that the Bond Purchase agreements both have been amended, but no amendments modify the attorney fee provision.

Under these agreements, Gordon Paving cannot seek its fees or costs for the deficiency judgment hearing. Gordon Paving agreed it would pay *all fees and costs*, including its own without limitation, arising out of a default. Therefore, under Idaho case law, the Court simply lacks discretion to award attorney fees. For that reason, the Court should deny Gordon Paving's request for fees and costs.

B. Gordon Paving Is Not the Prevailing Party Under I.C. § 12-120(3) or I.R.C.P. 54(d)(1).

Even if the Court somehow holds that it could grant Gordon Paving an award of fees and costs despite the agreement, Gordon Paving is not a prevailing party. I.C. § 12-120(3) allows for attorney fees for the prevailing party in a suit regarding a commercial transaction:

In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

Under this provision, a debtor resisting a deficiency judgment is not the "prevailing party" as a matter of law. In *Evans v. Sawtooth Partners*, the Evanses sued Sawtooth Partners for a deficiency judgment after foreclosing nonjudicially on a deed of trust. 111 Idaho 381, 383, 723 P.2d 925, 927 (Ct. App. 1986). The Evanses lost at the deficiency judgment trial, and Sawtooth Partners petitioned for its attorney fees as the prevailing party. *Id.* at 387, 723 P.2d at 931. The trial judge denied the petition, reasoning that his "sense of justice" prevented him from ordering that the Evanses pay the fees given that Sawtooth Partners defaulted, necessitating the suit to begin with. *Id.* The Court of Appeals reversed this determination, holding that the district court

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISALLOW
DEFENDANTS' REQUEST FOR ATTORNEY'S FEES AND COSTS - 5**

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exceeded its discretion in refusing to order fees based on the judge's "sense of justice" rather than analyzing as a matter of law who the prevailing party was. *Id.* The Court of Appeals remanded, ordering that the district court determine who the prevailing party was by analyzing: "(a) the final judgment or result obtained in the action in a relation to the relief sought by the respective parties; (b) whether there were multiple claims or issues between the parties; and (c) the extent to which each of the parties prevailed on each of the issues or claims." *Id.* (internal quotation marks and citation omitted). Thus, the Court must find that, under this test, Gordon Paving is the prevailing party.

This three-factor test is mirrored in the definition of "prevailing party" as set forth in I.R.C.P. 54(d)(1)(B). This rule guides the Court's inquiry on the prevailing party question. *Shore v. Peterson*, 146 Idaho 903, 914, 204 P.3d 1114, 1125 (2009). I.R.C.P. 54(d)(1)(B) provides as follows:

In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

The prevailing party question is examined "from an overall view [of the action], not a claim-by-claim analysis." *Shore*, 146 Idaho at 914, 204 P.3d at 1125. And, "[w]here both parties are partially successful, a court in its discretion may choose not to award attorney fees to either party." *Wandering Trails, LLC v. Big Bite Excavation, Inc.*, 156 Idaho 586, 329 P.3d 368, 380 (2014).

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISALLOW
DEFENDANTS' REQUEST FOR ATTORNEY'S FEES AND COSTS - 6**

77093686.2 0047071-00001

Here, AgStar prevailed in the foreclosure action-in-chief, and the Court entered a judgment and decree of foreclosure against Gordon Paving. (Judgment and Decree of Foreclosure, entered June 19, 2013.) That decree ordered that Gordon Paving's indebtedness was almost \$10 million, and allowed AgStar to sell the Gordon Paving real property in satisfaction of the judgment. *See id.* Later, AgStar prevailed in ousting Gordon Paving from the real property, though the parties eventually stipulated to allow Gordon Paving to continue to remove aggregate. (Order re Possession of Property, entered April 14, 2014.) Recently, AgStar also defeated Gordon Paving's objection to the sale of the personal property collateral, and received the Court's approval to auction the personal property in satisfaction of its judgment, which comes with additional fees and costs that AgStar has not requested as of yet. (Order Approving Personal Property Collateral Auction, entered September 19, 2014.) Gordon Paving has prevailed only in resisting the entry of a deficiency judgment.

The notion that Gordon Paving is the prevailing party under these circumstances is preposterous. The defendants in this case defaulted on a \$10 million obligation, have made no payments on the obligation for over two years, pocketed sums owed to AgStar, and have done everything in their power to delay AgStar's ability to be made whole. At every stage of litigation, AgStar has prevailed. To suggest that fees should be awarded to a party in this circumstance would be a complete misuse of the Idaho fees provisions. Therefore, the Court should decline to find that Gordon Paving is the prevailing party.

III. CONCLUSION

Because the agreement between the parties places liability for all fees and costs with Gordon Paving, the Court lacks discretion to award fees and costs to Gordon Paving for prevailing at the deficiency judgment hearing. Alternatively, Gordon Paving is not the prevailing

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISALLOW
DEFENDANTS' REQUEST FOR ATTORNEY'S FEES AND COSTS - 7**

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party under I.C. § 12-120(3) or I.R.C.P. 54(d)(1). For these reasons, the Court should deny awarding Gordon Paving its fees or costs for the deficiency judgment hearing.

DATED: September ²⁴ , 2014.

STOEL RIVES LLP

Kersti H. Kennedy

Bradley J. Dixon
Kersti H. Kennedy
Attorneys for Plaintiff

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISALLOW
DEFENDANTS' REQUEST FOR ATTORNEY'S FEES AND COSTS - 8**

77093686.2 0047071-00001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of September, 2014, I served a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISALLOW DEFENDANTS' REQUEST FOR ATTORNEY'S FEES AND COSTS** in the above-entitled matter as follows:

<p>Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com</p> <p><i>Attorneys for Defendants:</i> <i>Northwest Sand & Gravel, Inc.</i> <i>Gordon Paving Company, Inc.</i> <i>Blackrock Land Holdings, LLC</i></p>	<p>[] Via U.S. Mail [] Via Facsimile [<input checked="" type="checkbox"/>] Via Overnight Mail [] Via Hand Delivery [<input checked="" type="checkbox"/>] Via email</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

By:

Kersti H. Kennedy

Bradley J. Dixon
Kersti H. Kennedy

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISALLOW
DEFENDANTS' REQUEST FOR ATTORNEY'S FEES AND COSTS - 9**

77093686.2 0047071-00001

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 btr@idlawfirm.com

Attorneys for defendants:
 Northwest Sand & Gravel, Inc.,
 Gordon Paving Company, Inc., and
 Blackrock Land Holdings, LLC

DISTRICT COURT
 TWIN FALLS CO., IDAHO
 FILED

2014 OCT 31 PM 4:53

BY SP CLERK
 DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

vs.

NORTHWEST SAND & GRAVEL, INC.,
 an Idaho corporation; GORDON PAVING
 COMPANY, INC., an Idaho corporation;
 BLACKROCK LAND HOLDINGS, LLC,
 an Idaho limited liability company; TOWN
 AND COUNTRY BANK, INC.; and FIRE
 SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 2012-2731

**DEFENDANTS' REBUTTAL
 MEMORANDUM IN SUPPORT OF ITS
 MOTION FOR AWARD OF
 ATTORNEY FEES AND COSTS**

I. INTRODUCTION

On June 19, 2013, this Court entered its *Judgment and Decree of Foreclosure* in favor of Plaintiff, who then exercised its rights and sold the property at Sheriff's auction on November 21, 2014. A result of these events is that the bond purchase agreements merged with

DEFENDANTS' REBUTTAL MEMORANDUM IN SUPPORT
 OF MOTION FOR AWARD OF ATTORNEY FEES AND COSTS-1

the judgment and any rights the parties may have had under them ceased to exist. Thus, the Court should view Plaintiff's *Motion for a Deficiency Judgment* as a separate cause of action that arises from the *Judgment and Decree of Foreclosure*; else under the "one action rule" such a motion would be impermissible. Accordingly, the contractual provisions governing attorney's fees and costs are inapplicable to Plaintiff's action to obtain a deficiency judgment.

Since Plaintiff's attempt to obtain a deficiency against Gordon Paving is a separate matter from the prior proceedings, then it should be analyzed separately to determine who the prevailing party was. In this case that is a fairly straight forward analysis. The Plaintiff brought its motion to obtain a deficiency judgment and the Court utterly denied that motion. Thus, since there is no dispute that gravamen of this case was a commercial transaction, as the prevailing party Gordon Paving is entitled to an award of attorney's fees and costs under Idaho law.

II. ANALYSIS

A. The Bond Purchase Agreement Merged With the Judgment and Decree of Foreclosure

When a valid final judgment is rendered, "the original claim is extinguished, and a new cause of action on the judgment is substituted for it." *Yergensen v. Ford*, 16 Utah 2d 397, 400, 402 P.2d 696, 697 (1965). Or, as the Idaho Supreme Court held: "[w]hen a contract has become merged in a valid judgment, all possibility of its revival is irretrievably lost, as Carlyle would say, "clean gone," its nostrils forever sealed to the breath of life." *Woods v. Locke*, 49 Idaho 486, 289 P. 610, 611 (1930). Thus, under Idaho law the bond purchase agreements between the Plaintiff and Gordon Paving merged with the final judgment and the parties respective rights (including those regarding litigation costs) were replaced by the final judgment.

B. Plaintiff's Motion for a Deficiency Judgment was a Separate Action

Plaintiff's motion for a deficiency is a separate matter from the foreclosure action. This Court's *Judgment and Decree of Foreclosure* is a final judgment and resolved the issues pertaining to Gordon Paving's default under the bond purchase agreement. It grants Plaintiff the right to sell its collateral at a sheriff's auction in order to collect the amount of the judgment against Gordon Paving and includes an award of attorney's fees and costs to Plaintiff. The Plaintiff exercised its rights under the judgment and in fact sold the property. Then, under Idaho law, the Plaintiff brought a second action to obtain a deficiency against Gordon Paving. This was a completely separate matter from the foreclosure process. It required a new set of facts and a separate legal analysis by the Court. Hence, the parties had to prosecute/defend this matter in a different trial. Thus, when determining who the prevailing party is, the Court should look at the motion for a deficiency judgment separately from the other matters litigated between the two parties.

In Idaho the test to determine who the prevailing party is for purposes of awarding attorney's fees is contained in I.R.C.P. 54(d)(1)(B). Under the rule, the predominant factor to be considered is: the final judgment in relation to the relief sought. In this case Plaintiff attempted to collect nearly \$3 million from Gordon Paving and the Court awarded it nothing. As the Court pointed out at the beginning of trial, this case is about one issue. That issue being, could the Plaintiff show by a preponderance of the evidence that the value of property was less than the judgment against Gordon Paving. The Plaintiff totally failed in its burden, with the Court concluding that the property was worth at least \$1.7 million more than the debt owed. Accordingly, on Plaintiff's motion for a deficiency, Gordon Paving prevailed.

The Idaho fee provisions grants parties like Gordon Paving relief from the costs of litigation. In the present case the Plaintiff attempted to collect a deficiency judgment using a

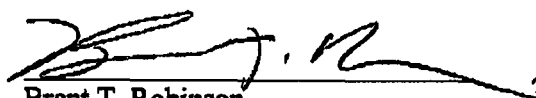
DEFENDANTS' REBUTTAL MEMORANDUM IN SUPPORT
OF MOTION FOR AWARD OF ATTORNEY FEES AND COSTS-3

year old appraisal that was not event based on correct data. Despite being confronted with those flaws, the Plaintiff insisted on litigating this case. It would be unfair to impose on Gordon Paving the cost of defending itself from Plaintiff's claim now, just as it would have been unfair for the Court to not include litigation costs in its *Judgment and Decree of Foreclosure*. In short, the Plaintiff seized and sold \$11.7 million worth of assets to satisfy a \$9.8 million debt and then attempted to collect even more money from Gordon Paving. Since Gordon Paving successfully defeated Plaintiff's claim, the Court should rule it was the prevailing party and award attorney's fees accordingly.

III. CONCLUSION

Any contractual obligations of the parties were extinguished by the *Judgment and Decree of Foreclosure*, which is a separate action from Plaintiff motion for a deficiency judgment. Gordon Paving prevailed in that proceeding and completely defeated Plaintiff's attempt to obtain a \$3 million judgment against it. Idaho law requires that this Court award Gordon Paving its attorney fees and costs as the prevailing party in a case with a commercial transaction as its gravamen. Accordingly, Gordon Paving reaffirms its request that this Court award it \$2911.16 in costs as a matter of right, \$854.01 in discretionary costs, and attorney fees of \$21,512.00, for a total of costs and fees of \$25,277.17.

DATED this 31st day of October, 2014.


Brent T. Robinson
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October, 2014, I caused to be served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

Bradley J. Dixon, Esq.
Kersti H. Kennedy, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard,
Suite 1900
Boise, Idaho 83702

☐ U.S. Mail, Postage Prepaid
☒ Facsimile (208) 389-9040
☒ E-mail bjdixon@stoel.com
☐ Special handling _____


Brent T. Robinson

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DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 NOV -6 PM 4:44

BY _____
CLERK

DEPUTY

Bradley J. Dixon, ISB No. 6167
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Kersti H. Kennedy, ISB No. 9064
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STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**REPLY IN SUPPORT OF MOTION TO
DISALLOW FEES AND COSTS**

I. INTRODUCTION

The Defendants contend that they have the right to seek attorney fees and costs as a "prevailing party" because the Judgment and Decree of Foreclosure ("Decree") extinguished the contract between the parties, including the attorney fees provisions. They believe the Decree provides the basis for the deficiency judgment, and therefore makes the deficiency judgment

REPLY IN SUPPORT OF MOTION TO DISALLOW FEES AND COSTS - 1

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proceeding a postjudgment matter. If this argument is correct, the Defendants are barred from seeking fees and costs under I.C. § 12-120(5).

II. ARGUMENT

A. **If the Bond Purchase Agreements Were Extinguished and the Decree Governs, the Defendants are Not Allowed Postjudgment Costs and Fees Under I.C. § 12-120.**

The Defendants argue that the contract was merged into the Decree, that the Decree governs the parties' relationship to the exclusion of the bond purchase agreements, and that if the deficiency judgment proceeding is not viewed as a postjudgment collection matter, it would violate the "one action rule." (Defendants' Rebuttal Memorandum in Support of Motion for Award of Attorney Fees and Costs, filed October 31, 2014, at 3 ("[T]he Court should view Plaintiff's *Motion for a Deficiency Judgment* as a separate cause of action that arises from the *Judgment and Decree of Foreclosure*; else under the 'one action rule' such a motion would be impermissible."))

Assuming that the deficiency judgment trial was a postjudgment proceeding, the Defendants are barred from seeking attorney fees under I.C. § 12-120(5), which governs postjudgment fees and costs:

In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

Idaho Code Ann. § 12-120(5). The Defendants are not entitled to fees under Subsection 1 (prevailing party; claim under \$35,000); Subsection 2 (applying Subsection 1 to counterclaims, etc.); Subsection 3 (prevailing party in commercial transaction); nor Subsection 4 (personal injury). Because the Defendants were not the prevailing party in the case-in-chief under any of

these provisions, they may not recover postjudgment fees and costs, even if they are the “prevailing party” in the postjudgment context.

The Supreme Court has agreed with this interpretation of the statute. In *Credit Bureau of Eastern Idaho, Inc. v. Lecheminant*, a judgment creditor obtained a default judgment against a husband and wife. 149 Idaho 467, 235 P.2d 1188 (2010). The husband then remarried, and the judgment creditor filed an application for garnishment against the new wife’s employer as garnishee. *Id.* at 468, 235 P.2d at 1189. The new wife and employer filed a claim of exemption. *Id.* The trial court granted the claim of exemption and the creditor appealed to the district court, which affirmed and denied the creditor’s petition for costs and fees for the postjudgment matters. *Id.* at 473; 235 P.2d at 1194. The district court denied the fees, as the creditor was not the “prevailing party” in the postjudgment proceedings. *Id.*

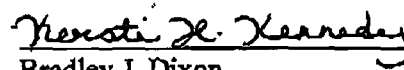
The Supreme Court reversed, holding that I.C. § 12-120(5) “includes no such requirement” of being a prevailing party, and if a party prevails in the case-in-chief, but fails in a postjudgment matter, it is still entitled to fees for losing postjudgment. *Id.* Under this reasoning, Plaintiff AgStar is the party entitled to fees, not the Defendants, and AgStar does plan to seek its fees for prosecution of the deficiency judgment.

III. CONCLUSION

The Defendants are not authorized to seek their fees and costs under I.C. § 12-120(5), if the deficiency judgment is a postjudgment matter arising from the Decree. For that reason, the Court should deny the Defendant’s Motion for Attorney Fees and Costs.

DATED: November 6, 2014.

STOEL RIVES LLP

A handwritten signature in cursive script, reading "Kersti H. Kennedy", is written over a horizontal line.

Bradley J. Dixon

Kersti H. Kennedy

Attorney for Plaintiff

REPLY IN SUPPORT OF MOTION TO DISALLOW FEES AND COSTS - 4

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of November, 2014, I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION TO DISALLOW FEES AND COSTS** in the above-entitled matter as follows:

<p>Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com</p> <p><i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i></p>	<p><input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

By: Kersti H. Kennedy
Kersti H. Kennedy

REPLY IN SUPPORT OF MOTION TO DISALLOW FEES AND COSTS - 5

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DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

NOV 13 2014

By _____ 10:15 AM
Clerk
Deputy Clerk

Bradley J. Dixon, ISB No. 6167
Email: bjdixon@stoel.com
Kersti H. Kennedy, ISB No. 9064
Email: khkennedy@stoel.com
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
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Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**! ORDER RE VEHICLE
TITLE WITH JOHN DEERE LIEN**

This matter came before the Court on November 10, 2014 on Plaintiff's Motion for Order Directing John Deere Financial to Send Vehicle Title to AgStar. The Court acknowledges that the Defendants have given their permission in open court and by virtue of the attached document (**Exhibit A: Notice of Approval of Transfer**) for John Deere Finance to mail the title, with lien released signed by John Deere, for the 2002 Trail King Trailer, VIN 1TKC024212M098531,

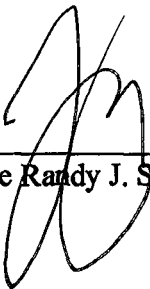
ORDER RE VEHICLE TITLE WITH JOHN DEERE LIEN- 1

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Title No. 023056317 to AgStar, care of Stoel Rives, Attn. Bradley J. Dixon (101 S Capitol Boulevard, Suite 1900; Boise, ID 83702), so that AgStar may sell the vehicle as soon as possible.

DATED: 6/13, 2014.



Judge Randy J. Stoker

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day Nov, 2014, I served a true and correct copy of the foregoing the **ORDER RE VEHICLE TITLE WITH JOHN DEERE LIEN** in the above-entitled matter by US Mail, postage prepaid to the following:

Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com <i>Attorneys for Defendants</i>	
Bradley J. Dixon Kersti H. Kennedy STOEL RIVES LLP 101 S Capitol Boulevard, Suite 1900 Boise, ID 83702 <i>Attorneys for Plaintiff</i>	

By:


Clerk of the Court

Exhibit A

Exhibit A

RECEIVED

NOV 10 2014

STOEL RIVES

Brent T. Robinson, Esq.
ROBINSON & TRIBE
Attorneys at Law
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 1932
btr@idlawfirm.com

Attorneys for defendants
Northwest Sand & Gravel, Inc.,
Gordon Paving Company, Inc., and
Blackrock Land Holdings, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

vs.

NORTHWEST SAND & GRAVEL, INC., an
Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho corporation;
BLACKROCK LAND HOLDINGS, LLC, an
Idaho limited liability company; TOWN AND
COUNTRY BANK, INC.; and FIRE SERVICE
OF IDAHO, INC.

Defendants

Case No. CV-12-2731

NOTICE OF APPROVAL
OF TRANSFER

NOTICE IS HEREBY GIVEN:

That Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc., and
Blackrock Land Holdings, LLC, some of the defendants in the above-captioned matter, by and

Notice . . .

- 1 -

through their attorney of record, Brent T. Robinson, have no objection to the transfer of title to the 2002 TRLK TK, VIN # 1TKCO24212MO98531, from John Deere to the above-named plaintiff, and hereby authorize said transfer.

DATED this 6th day of November, 2014.

ROBINSON & TRIBE

By: Brent T. Robinson
Brent T. Robinson

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of November, 2014, I caused to be served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

Bradley J. Dixon, Esq.
Jennifer M. Reinhardt, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702

- ☐ U.S. Mail, Postage Prepaid
- ☐ Facsimile (208) 389-9040
- ☐ E-mail bjdixon@stoel.com;
- ☐ E-mail jmreinhardt@stoel.com
- ☐ Special handling _____

Brent T. Robinson
Brent T. Robinson

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

NOV 18 2014

By _____ 11:00 AM
Clerk
Deputy Clerk

Brent T. Robinson, Esq.
ROBINSON & TRIBE
Attorneys at Law
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 1932
btr@idlawfirm.com

Attorneys for defendants
Northwest Sand & Gravel, Inc.,
Gordon Paving Company, Inc., and
Blackrock Land Holdings, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,	)	Case No. CV-12-2731
)	
Plaintiff,)	
)	
vs.)	
)	
NORTHWEST SAND & GRAVEL, INC., an	)	JUDGMENT FOR AWARD
Idaho corporation; GORDON PAVING	)	OF ATTORNEY'S FEES
COMPANY, INC., an Idaho corporation;	)	AND COSTS
BLACKROCK LAND HOLDINGS, LLC, an)	
Idaho limited liability company; TOWN AND)	
COUNTRY BANK, INC.; and FIRE SERVICE)	
OF IDAHO, INC.)	
)	
Defendants)	

JUDGMENT IS ENTERED AS FOLLOWS:

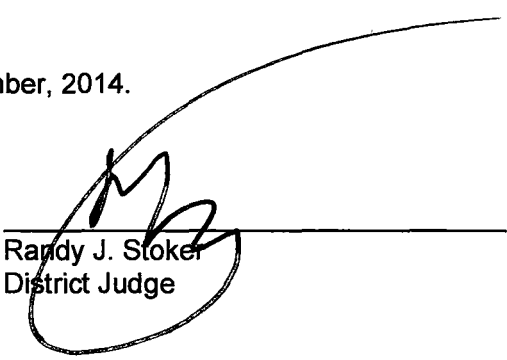
Defendants do have and recover of and from the said plaintiff, Agstar Financial Services, ACA, Gordon Paving's costs in the sum of Two Thousand Nine Hundred Eleven and

Judgment . . .

- 1 -

16/100 Dollars (\$2,911.16), discretionary costs in the sum of Eight Hundred Fifty-four and 01/100 Dollars (\$854.01), and attorney's fees in the sum of Twenty-one Thousand Five Hundred Twelve Dollars (\$21,512), for a total of costs of fees of Twenty-five Thousand Two Hundred Seventy-seven and 17/100 Dollars (\$25,277.17), said judgment to bear interest at the highest legal rate until satisfied.

DATED this 18th day of November, 2014.



Randy J. Stoker
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of November, 2014, I caused to be served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

Bradley J. Dixon, Esq.
Jennifer M. Reinhardt, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702

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☐ E-mail bjdixon@stoel.com;

☐ E-mail jmreinhardt@stoel.com

☐ Special handling _____

Brent T. Robinson
ROBINSON & TRIBE
P. O. Box 396
Rupert, Idaho 83318

☒ U.S. Mail, Postage Prepaid

☐ Facsimile (208) 389-9040

☐ E-mail bjdixon@stoel.com;

☐ E-mail jmreinhardt@stoel.com

☐ Special handling _____

CLERK OF THE COURT

By: 

Deputy Clerk

132
Bradley J. Dixon, ISB No. 6167
Email: *brad.dixon@stoel.com*
Kersti H. Kennedy, ISB No. 9064
Email: *kersti.kennedy@stoel.com*
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 NOV 21 AM 10:22

BY _____
CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**PLAINTIFF'S PETITION FOR POST-
JUDGMENT ATTORNEYS' FEES AND
COSTS**

Pursuant to Idaho Code §12-120(5), and Idaho Rule of Civil Procedure "Rule" 54,
Plaintiff AgStar Financial Services, ACA ("AgStar"), by and through its attorneys of record,
Stoel Rives LLP, hereby respectfully move this Court to approve those attorneys' fees and costs
incurred by AgStar from and after June 19, 2013, to the present date, and to amend the Judgment
and Decree of Foreclosure Judgment ("Judgment") entered on said date accordingly. Such

PLAINTIFF'S PETITION FOR POST-JUDGMENT ATTORNEYS' FEES AND COSTS

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attorney's fees and costs having been reasonably and necessarily incurred by AgStar in attempting to satisfy the Judgment entered herein.

This petition is based on the matters on file herein, including, without limitation ... and the Affidavit of Bradley J. Dixon, filed concurrently herewith.

The attorneys' fees and costs requested are reasonable and were necessarily and reasonably incurred during this proceeding. As indicated on *Exhibit C* to the Affidavit of Bradley J. Dixon, the fees are computed on the basis of an hourly rate which is commensurate with rates charged by other attorneys and paralegals providing litigation services in the state of Idaho. The attorneys' time is coded on *Exhibit C* by their initials, as follows:

BJD Bradley Dixon, Partner at Stoel Rives LLP

(2013 hourly rate: 365.00; 2014 hourly rate: 375.00)

WCP W. Christopher Pooser, Partner at Stoel Rives LLP

(2013 hourly rate: 350.00; 2014 hourly rate: 360.00)

KHK Kersti H. Kennedy, Attorney at Stoel Rives LLP

(2013 hourly rate: 220.00; 2014 hourly rate: 225.00)

SMB Sara M. Berry, Attorney at Stoel Rives LLP

(2014 hourly rate: 265.00)

DSF Darin S. Frost, Paralegal at Stoel Rives LLP

(2013 hourly rate: 190.00; 2014 hourly rate: 200.00)

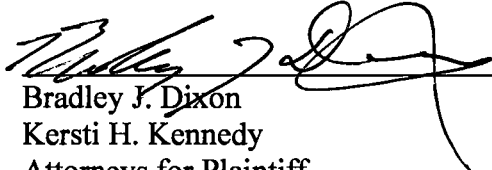
M-W Michelle L. Webberley, a case assistant at Stoel Rives LLP

(2014 hourly rate: 80.00)

Plaintiff respectfully requests the Court to find that Post-judgment attorneys' fees and costs are properly awarded.

DATED: November 20, 2014.

STOEL RIVES LLP



Bradley J. Dixon
Kersti H. Kennedy
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2014, I served a true and correct copy of the foregoing **PLAINTIFF'S PETITION FOR POST-JUDGMENT ATTORNEYS' FEES AND COSTS** in the above-entitled matter as follows:

<p>Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com</p> <p><i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i></p>	<p><input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

By:


Bradley J. Dixon
Kersti H. Kennedy

132
Bradley J. Dixon, ISB No. 6167
Email: *brad.dixon@stoel.com*
Kersti H. Kennedy, ISB No. 9064
Email: *kersti.kennedy@stoel.com*
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Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 NOV 21 AM 10:22

BY SP CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S PETITION FOR POST-
JUDGMENT ATTORNEYS' FEES AND
COSTS**

Pursuant to Idaho Code §12-120(5), Plaintiff AgStar Financial Services, ACA
("AgStar"), by and through its attorneys of record, Stoel Rives LLP, hereby submit their
Memorandum in Support of Petition for Post-Judgment Attorneys' Fees and Costs
("Memorandum") and respectfully move this Court to approve those attorneys' fees and costs
incurred by AgStar from and after June 19, 2013, to the present date, and to amend the Judgment

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S PETITION FOR POST-
JUDGMENT ATTORNEYS' FEES AND COSTS - 1**

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and Decree of Foreclosure Judgment (“Judgment”) entered on said date accordingly. Such attorney’s fees and costs having been reasonably and necessarily incurred by AgStar in attempting to satisfy the Judgment entered herein. This petition is based on the matters on file herein, the Affidavit of Bradley J. Dixon (“Dixon Aff.”), filed concurrently herewith, as well as the pleadings and other documents on file in this matter with the Court.

I. BACKGROUND

On June 19, 2013, this Court entered a Judgment and Decree of Foreclosure (“Judgment”) in favor of Plaintiff and against the Defendants Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc. and Blackrock Land Holdings, LLC (“Defendants”). Thereafter, on September 20 2013, this Court entered an Order Granting Memorandum of Costs and Fees (“Fees Order”), in favor of AgStar in the amount of \$59,623.01. The Fees Order only captures fees and costs incurred by Plaintiff up to and including June 19, 2013, for the purpose of obtaining the Judgment. Between the time of entry of the Judgment and present Plaintiff has expended significant attorney’s fees and costs seeking to collect on the Judgment. *See Dixon Aff.* ¶¶ 1-4, Ex.’s A - B. Plaintiffs collection efforts include, among other things, causing to be issued a Writ of Execution for Property and Order of Sale in July 2013; said sale was subsequently conducted on December 5, 2013, by the Twin Falls County Sheriff. Additionally, in December, 2013, Plaintiff caused to be issued another Writ of Execution for Equipment and sought a Writ of Assistance for unpaid rent, which was then ordered on January 3, 2014. Further, Plaintiff has been presented with substantial opposition related to the collection and identification of personal property much of which is still being withheld. The personal property that was located has been auctioned with consistent opposition from the Defendants. As the

Court is well aware, collection efforts have often required motion practice on even the simplest of items.

II. ARGUMENT

A. Attorney's Fees and Costs are Warranted and Proper in this Case Pursuant to Idaho Code Section 12-120(5)

Idaho Code § 12-120(5) provides for the recovery of attorney fees for amounts expended related to attempting to collect on a judgment. Specifically, Idaho Code § 12-120(5) states that “in all instances where a party is entitled to reasonable attorney’s fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable postjudgment attorney’s fees and costs incurred in attempting to collect on the judgment.”

This Court has already determined within the Fees Order that Plaintiff is entitled to its fees pursuant to Idaho Code § 12-120(3). *See* Dixon Aff. ¶ 2, Ex. B. Pursuant to Idaho Code § 12-120(5), once a party is entitled to its fees under Idaho Code § 12-120(3), it is also entitled to post-judgment fees and costs incurred for the purpose of executing upon a judgment. In other words, the fee award for post-judgment execution efforts is mandatory. Finally, the fees and costs expended by Plaintiff in attempting to execute upon the judgment were reasonable for this market and necessarily incurred, given the issues involved. Dixon Aff., ¶ 6.

B. Bond Purchase Agreement Requires Defendants to Pay AgStar's Fees and Costs Incurred.

Under Idaho law, if a contract contains an attorney fees provision, the terms of that provision establish the right to such fees. *Lamprecht v. Jordan, LLC*, 139 Idaho 182, 186, 75 P.3d 743, 747 (2003) (citing *Farm Credit Bank of Spokane v. Wissel*, 122 Idaho 565, 568-69, 836 P.2d 511, 514-15 (1992)).

Here, the Bond Purchase Agreement allows AgStar to collect actual fees and costs (expenses) incurred:

8. Remedies. Upon the occurrence of an Event of Default ...Investor may pursue all rights and remedies available under any of the Bond Security Documents, as well as any rights and remedies at law, or in equity, which it deems advisable for the protection of its interests to collect and enforce payment, and such rights and remedies shall be cumulative. The Issuer shall pay all expenses, court costs and reasonable attorney's fees incurred in connection with or arising out of any default hereunder.

(Exhibit A to Verified Complaint filed June 29, 2012.) The terms of the Agreement allow for AgStar's attorneys to collect all of its costs and fees requested, for a total award of \$145,282.43.

III. ATTORNEY FEES AND PARALEGAL FEES REQUESTED

Plaintiff requests the recovery of fees pursuant to Idaho Code § 12-120(5) in the following amounts.

1. Attorney/Paralegal Fees: \$ 135,282.50

For an itemization of attorney fees and paralegal fees see Dixon Aff, Ex. C.

As indicated in Ex. C to the Dixon Aff., the stated fees are computed on the basis of an hourly rate which is commensurate with rates charged by other attorneys and paralegals providing litigation services in the state of Idaho. *See* Dixon Aff. at ¶¶ 5-6.

The following attorneys and paralegals rendered services to Plaintiff in this matter and in the following amounts:

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>TOTAL</u>
Bradley J. Dixon/Partner (BJD) (2013 Rate: 360.00 / 2014 Rate: 375.00)	271.7	\$100,200.50
Brandi M. Soares/Paralegal (BMS) (2013 Rate: 175.00)	11.7	\$2,047.50
Erin L. Eliassen/Partner (EXE) (2013 Rate: 440.00)	31.3	\$13,772.00

MEMORANDUM IN SUPPORT OF PLAINTIFF'S PETITION FOR POST-JUDGMENT ATTORNEYS' FEES AND COSTS - 4

Kersti H. Kennedy/Associate (KHK) (2013 Rate: 220.00 / 2014 Rate: 225.00)	82.3	\$18,240.50
Richard H. Hall/Partner (RHR) (2014 Rate: 340.00)	2.3	\$782.00
Jackie Franolich/Paralegal (J-F) (2014 Rate: 160.00)	1.5	\$240.00

IV. COSTS REQUESTED

Plaintiff requests costs in the following amounts:

1. Discretionary costs: \$ 9,999.93

For an itemization of costs see Dixon Aff., Ex. D.

V. CONCLUSION


Based on the foregoing, this Court should enter an order granting fees and costs in favor of Plaintiff in the following amounts:

Total Fees:	\$135,282.50
Total Costs:	\$ 9,999.93
Total Fees and Costs Requested:	\$145,282.43

Plaintiff has filed this Petition to reflect all costs and fees incurred by the Plaintiff in this matter following the Fees Order entered by this Court. The discretionary costs were necessary and exceptional costs reasonably incurred by Plaintiff, and should in the interest of justice be assessed against the Defendants. Plaintiff is entitled to recover its costs and attorney's fees under the provisions of Idaho Code § 12-120(5) and the applicable agreements and respectfully requests that this court award Plaintiff \$145,282.43 in post-judgment attorney fees and costs.

DATED: November 20, 2014.

STOEL RIVES LLP



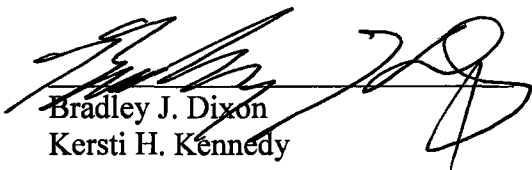
Bradley J. Dixon
Kersti H. Kennedy
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2014, I served a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF PLAINTIFF'S PETITION FOR POST-JUDGMENT ATTORNEYS' FEES AND COSTS** in the above-entitled matter as follows:

<p>Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com</p> <p><i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i></p>	<p><input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

By:


Bradley J. Dixon
Kersti H. Kennedy

37
Bradley J. Dixon, ISB No. 6167
Email: *brad.dixon@stoel.com*
Kersti H. Kennedy, ISB No. 9064
Email: *kersti.kennedy@stoel.com*
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 NOV 21 AM 10:22

BY CLERK
 DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**AFFIDAVIT OF BRADLEY J. DIXON IN
SUPPORT OF PLAINTIFF'S PETITION
FOR POST-JUDGMENT ATTORNEYS'
FEES AND COSTS**

STATE OF IDAHO)
 :ss.
County of Ada)

BRADLEY J. DIXON, being first duly sworn on oath, deposes and says:

I am a Partner with the law firm of Stoel Rives LLP, and one of the attorneys of record
representing Plaintiff AgStar Financial Services, ACA ("AgStar") in the above-entitled matter. I

**AFFIDAVIT OF BRADLEY J. DIXON IN SUPPORT OF PLAINTIFF'S PETITION
FOR POST-JUDGMENT ATTORNEYS' FEES AND COSTS - 1**

am familiar with this case and make this affidavit based upon my own knowledge. I submit this affidavit in support of Plaintiff's Memorandum for Post-Judgment Attorney Fees and Costs Pursuant to Idaho Code 12-120(5), filed contemporaneously herewith

1. On June 19, 2013, a Judgment and Decree of Foreclosure ("Judgment") was duly entered in the instant action in favor of AgStar and against Defendants Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc. and Blackrock Land Holdings, LLC ("Defendants") herein. A copy of said Judgment is attached hereto as *Exhibit A*.

2. On September 30, 2013, this Court entered an Order Granting Memorandum of Costs and Fees ("Fees Order") in favor of Plaintiff AgStar in the amount of \$59,623.01. A copy of said Fees Order is attached hereto as *Exhibit B*.

3. The Court's Fees Order of September 30, 2013 granting Plaintiff attorney fees only reflected those attorney fees and costs billed through June, 21, 2013 and, does not include attorney's fees and cost related to services pertaining to attempts to satisfy the Judgment.

4. Between this Court's order granting Plaintiff attorney fees on September 30, 2013 and the date of this affidavit, Plaintiff has been required to expend significant attorney's fees and costs seeking to collect on the judgment entered roughly one year and five months ago by this Court. Following entry of judgment, Plaintiff immediately began its attempts to collect on the judgment.

5. Attached as *Exhibit C* is a summary and itemized report of time billed by Stoel Rives LLP for services related to its collection efforts in this matter in attempting to satisfy the Judgment. The total amount of fees sought by Stoel Rives LLP is \$ 135,282.50.

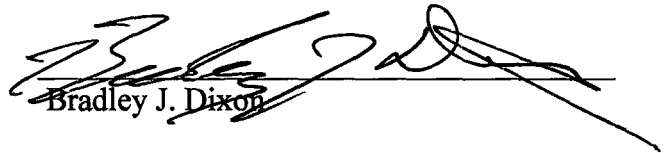
6. Each item of professional service and cost was undertaken and/or expended at the time the services were actually performed to advance and protect Plaintiff's interest in this case,

and the amount of time requested in this fee petition was reasonable and necessary. The hourly rate charged by Stoel Rives is reasonable and commensurate with rates charged by other regional firm attorneys and paralegals providing litigation services in the State of Idaho.

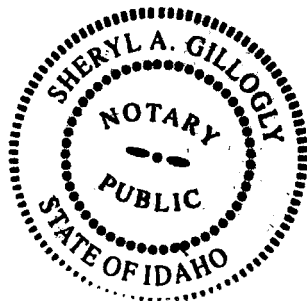
7. Attached as ***Exhibit D*** is a summary and itemized report of costs billed by Stoel Rives LLP related to its collection efforts. The total amount sought for discretionary costs spent by Stoel Rives LLP is \$ 9,999.93.

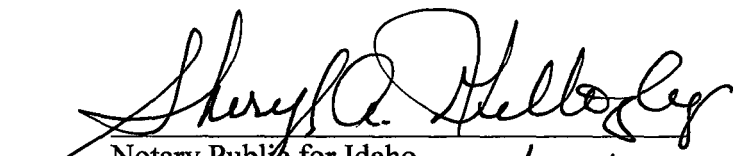
These discretionary costs were necessary and reasonably incurred, and should in the interest of justice be assessed against the Defendants, pursuant to Idaho Rules of Civil Procedure 54(d)(1)(D).

DATED this 20th day of November, 2014.


Bradley J. Dixon

SUBSCRIBED AND SWORN TO before me this 20 day of November, 2014.




Notary Public for Idaho
My Commission Expires: 11/24/14

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2014, I served a true and correct copy of the foregoing **AFFIDAVIT OF BRADLEY J. DIXON IN SUPPORT OF PLAINTIFF'S PETITION FOR POST-JUDGMENT ATTORNEYS' FEES AND COSTS** in the above-entitled matter as follows:

<p>Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com</p> <p><i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i></p>	<p><input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

By:


Bradley J. Dixon

Exhibit A

Bradley J. Dixon, ISB No. 6167
E-mail: bjdixon@stoel.com
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

TWIN FALLS COUNTY

Recorded for:
STOEL RIVES
12:00:45 PM 10-18-2013

2013-022010

No. Pages: 11 Fee: \$ 40.00
KRISTINA GLASCOCK
County Clerk
Deputy: BHUNTER

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

JUN 19 2013

By _____ 11:45 AM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**JUDGMENT AND DECREE OF
FORECLOSURE**

The Court having heard Defendants' Objection to Special Master's Report at a hearing
held on June 3, 2013 and for other good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That final judgment is entered in favor of Plaintiff, AgStar Financial Services,
ACA ("Lender"), and against Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc. and

Blackrock Land Holdings, LLC (hereinafter the "Defendants");

a. Principal	\$8,176,242.10
b. Interest (current to 6/14/13; \$1,943.03 per diem)	\$1,100,140.17
c. Late Charges (\$188.85 per diem)	\$79,707.15
d. USDA Guarantee Fees-2011	\$16,463.57
e. USDA Guarantee Fees-2012	<u>\$14,516.18</u>

TOTAL - as of June 14, 2013 accruing
interest at the applicable contract rate: \$9,387,069.17

2. Lender is further entitled to a prepayment premium, pursuant to the agreement of the parties. ~~The Bond, issued on December 10, 2007 in the principal amount of \$9,000,000.00 provides for the assessment of a prepayment fee at Paragraph 6, Page 2. Attached hereto as Exhibit A is a true and correct copy of the Bond. Paragraph 6, Page 2 is incorporated herein by this reference. As of June 14, 2013 Lender has calculated the prepayment premium which equals \$549,418.00. Once the sale date is scheduled Lender is directed to recalculate the prepayment premium and provide this Court with an update calculation within five (5) days of the sale.~~ *Prior to sale.*

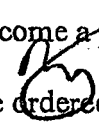
An Amended Judgment may then issue if appropriate

3. That the mortgage and security, being foreclosed in this action, grants Lender a good, sufficient and paramount lien on the Real Property Collateral, more particularly described in the Verified Complaint, securing the payment of the obligations evidenced by the bonds at issue in this lawsuit. The interest of Lender has priority and is superior to any claim, right, title or interest of all Defendants, subject to Defendants' right of redemption;

4. That Lender has a good, sufficient and paramount security in the Personal Property Collateral, as described in the Verified Complaint, securing payment of the obligations

evidence by the bonds at issue in this litigation. The interest of Lender has priority and is superior to any claim, right, title or interest of all Defendants, subject to Defendants' right of redemption;

5. That, pursuant to the manner prescribed by Idaho law and according to the rules and practice of this Court, the Sheriff of Twin Falls County, Idaho sell at public auction the Real Property Collateral, and Personal Property Collateral, with proceeds applied first to the Sheriff's commission and costs of sale with the balance applied to satisfy all amounts due and owing to Lender on the judgment set forth above;

6. That Lender or any other party may become a purchaser at such Sheriff's sale; that following such sale, the Sheriff of ^{Twin Falls} ~~Ada~~ County be  ordered to execute and deliver a certificate of sale as required by law to the purchaser of the Real Property and his bill of sale to the purchase of the property. Upon the expiration of the period of redemption, said Sheriff is ordered to execute and deliver a deed to the purchaser or other holder of the certificate of sale of the Real Property Collateral, and after the delivery and production of said Sheriff's deed to the Real Property Collateral, the grantee named therein shall have full ownership and possession of the Real Property Collateral;

7. That in the event Lender is the successful purchaser of the Real Property Collateral and Personal Property Collateral at such sale, then Lender shall promptly pay the Sheriff fees, disbursements and commissions on such sale and if any other person or persons is the successful purchaser or purchasers at such sale, then the Sheriff from the proceeds of such sale shall retain his fees, disbursements and commissions on such sale, shall then apply the proceeds toward the payment of the Judgment rendered herein in favor of the Plaintiff and the surplus, if any, to the Clerk of the Court, there to be held by the Clerk of the Court and subject to

further order of the Court;

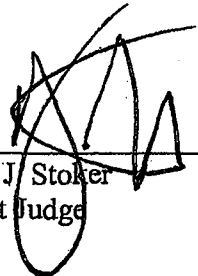
8. That the Defendants and any unknown heirs or devisees of the foregoing named parties who may be deceased, and the unknown owners, claimants and parties in interest claiming to all or any part of the Real Property Collateral or Personal Property Collateral, and each of them, and all persons claiming or to claim from and under them, or any of them, and all persons having liens subject to the mortgage or security by judgment or decree or otherwise upon the Property, or any part or parcel thereof, and their heirs, personal representatives and all persons claiming to have acquired any estate or interest in or to the Real Property Collateral or Personal Property Collateral be, and they hereby are, forever barred and foreclosed of and from all right, title, claim and interest in and to the Real Property Collateral and Personal Property Collateral and in and to every part or parcel thereof, except for such rights of redemption as they may have pursuant thereto, and that said persons, and each of them, be, and they hereby are enjoined and restrained from removing or destroying any of the buildings, the improvements or appurtenances, or otherwise damaging the Real Property Collateral or Personal Property Collateral prior to redemption from such sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the purchaser or purchasers of the Real Property Collateral and Personal Property Collateral at such sale be let into possession thereof consistent with Idaho law and that any of the parties to this action who may be in possession of the Real Property Collateral or Personal Property Collateral or any part thereof, or any person who, since the recording of the Sheriff's levy on this judgment or recording of the decree, whichever shall first occur, has come into possession, or any part thereof, shall deliver possession thereof to such purchaser or purchasers upon the production of a

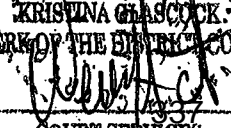
Sheriff's Certificate of Sale or Deed for the Property or any part thereof, executed by the Sheriff after the Defendants' right of redemption has lapsed.

Jurisdiction of this cause is hereby expressly reserved and retained for the purpose of making such further orders as may be necessary in order to carry this Decree of Foreclosure and Judgment into effect and correct any mathematical error, to grant any accrued credits, or for the purpose of making such further orders as may be necessary or desirable.

DATED this 19th day of June, 2013.



Randy J. Stoker
District Judge

State of Idaho
County of Twin Falls
I hereby certify the foregoing to be a full, true and correct copy of the original on file in the above entitled action.
10/29/13
KRISTINA GLASCOCK
CLERK OF THE DISTRICT COURT
By 
NOTION CREDITORS

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of June, 2013, I served by US Mail, postage prepaid a true and correct copy of the foregoing **DECREE OF FORECLOSURE AND JUDGMENT** in the above-entitled matter as follows:

<p>Matthew C. Darrington, Esq. ANTHON DARRINGTON PLLC P.O. Box 536 Rupert, ID 83350 Facsimile: (208) 260-5281 Email: matt@minicassialaw.com</p> <p><i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i></p>	<p><i>faxed / mailed</i></p>
<p>Bradley J. Dixon STOEL RIVES LLP 101 S Capitol Boulevard, Suite 1900 Boise, ID 83702 Facsimile: (208) 389-9040</p> <p><i>Attorneys for Plaintiff</i></p>	<p><i>faxed / mailed</i></p>

By:

Leorocky M. Miller
Clerk of the Court

Assn.	Branch #	CIF #	Bond Acct	Product Code
52	483	5603978	7616454400	3474

Gordon Paving Co., Inc.,
Northwest Sand & Gravel, Inc.,
and
Blackrock Land Holdings, LLC
Bond

PRINCIPAL AMOUNT: \$ 9,000,000.00

DATE OF ISSUE: 12/10/2007

MATURITY DATE: 12/10/2034

INVESTOR: Agri-Access®*

FOR VALUE RECEIVED, Gordon Paving Co., Inc., an Idaho Corporation, Northwest Sand & Gravel, Inc., an Idaho Corporation and Blackrock Land Holdings, LLC, an Idaho Limited Liability Company (the "Issuer") promises to pay to Agri-Access®,* a federally chartered corporation with principal offices at PO Box 7438, 3555 9th Street, Ste 400, Rochester MN, 55901 or to its registered holder (collectively, "Investor"), on or before the Maturity Date, 12/10/2034, the principal sum of \$ 9,000,000.00 together with interest thereon from the date of disbursement, 12/26/2007, (the "Disbursement Date"), pursuant to the terms and conditions of this Bond (this "Bond") and that certain Bond Purchase Agreement, of even date herewith, by and between Issuer and Investor (the "Bond Purchase Agreement"). All capitalized terms used in this Bond, but not otherwise defined herein, have the meaning ascribed to them in the Bond Purchase Agreement.

1. **INTEREST:** The annual rate of interest of the Bond is equal to 6.50% percent ("interest rate"). Interest hereunder shall be computed on the basis of a year of 360 or 365 days as Investor may determine, but charged for actual days principal is outstanding.

After the initial 7 years of the bond, the interest rate stated in this bond is subject to adjustment by the Investor or any subsequent holder of this Bond on each Rate Change Date. Effective on the 7-year anniversary date of the bond and each 7-years thereafter (each a "Rate Change Date"), the Variable Interest Rate shall change to a rate that shall be determined by adding a margin of 2.60% over the weekly average of the Federal Farm Credit Banks (FFCB) Funding Cost Index. The most current prior weekly average prior to the reprice date will be used. If the Index is no longer available, Lender will select a new index, which is based upon comparable information. Rates will be rounded the total to the nearest one-eighth of one percent.

Notwithstanding anything to the contrary in this Bond, Bond Purchase Agreement or any of the Bond Security Documents, Issuer shall not be required to pay unearned interest on this Bond, or ever be required to pay interest on this Bond at a rate in excess of the Maximum Rate, if any. If the effective rate of interest which would otherwise be payable under this Bond, Bond Purchase Agreement or any of the Bond Security Documents would exceed the Maximum Rate, if any, then the rate of interest which would otherwise be contracted for, charged, or received under

* Agri-Access® is a division and trademark of AgStar Financial Services, ACA. All references to Investor herein shall refer to AgStar Financial Services, ACA.

this Bond, Bond Purchase Agreement or any of the Bond Security Documents shall be reduced to the Maximum Rate, if any. For purposes of this Bond, "Maximum Rate" means the maximum nonusurious interest rate, if any, at any time, or from time to time, that may be contracted for, taken, reserved, charged or received under applicable state or federal laws.

2. DEFAULT INTEREST: Upon the occurrence of an Event of Default, any payment of principal or, to the extent permitted by applicable law, interest on this Bond not paid when due, whether by regular installment, upon prepayment, by acceleration, at maturity or otherwise, shall thereafter bear interest at a rate per annum equal to 2% in excess of the rate then applicable to this Bond, provided that in no event shall such rate exceed the Maximum Rate.

3. PAYMENT OF BOND: *Both principal and interest are due and payable in 324 monthly installments, beginning on the 1st day of the month in the month following closing and monthly thereafter on the first day of each month, and a final installment is due and payable on the Maturity Date. The initial monthly installments of principal and interest will be in the amount of \$58,999.95 and continue until such time as the interest rate is adjusted pursuant to the terms of this Bond.*

4. USE OF PROCEEDS. *The Issuer shall use the proceeds of the Bond to refinance debt currently held at Bank of America, Regal Bank and Rural Funding, LLC, pay costs and fees associated with this Bond, as well as fund the shop addition. The Issuer agrees that the proceeds of the Bond are to be used only for the purposes set forth in this Section 4.*

5. COLLATERAL: Payment of this Bond and the performance of all obligations of the Issuer under the Bond Purchase Agreement is secured by the Collateral described in the Bond Security Documents.

6. PREPAYMENT: The Issuer may prepay this Bond in whole or in part only in the amounts, upon the notice and subject to the conditions set forth herein and in the Bond Purchase Agreement. In the event the Issuer gives notice of any prepayment, such notice must specify the principal amount of this Bond to be prepaid, and the date of proposed prepayment; upon which such principal amount, together with accrued and unpaid interest thereon to the prepayment date and together with the applicable premium, if any, shall become due and payable on the prepayment date. Issuer may make advance payments in any amount and at any time. Notwithstanding any language in the Bond or any other document (collectively, "Bond") to the contrary, Issuer shall have no right to make advance payments of principal (hereinafter "prepayment") except for an optional prepayment of principal allowable annually only during the month of December (name of month) ("Optional Prepayment Month") in an amount equal to or less than 10% of the then outstanding principal balance. Prepayments other than those described above shall not be made without the Investor's consent, which the Investor will grant solely upon the terms and subject to the conditions hereinafter provided. In order to induce the Investor to accept any prepayment, the Issuer agrees to pay the Investor a prepayment fee for each such prepayment. A prepayment fee shall be due and payable for each such other prepayment made prior to 12/10/2014, (hereinafter "Fee End Date"). The prepayment fee shall be due and payable for each such advance payment made by the Issuer, whether made voluntarily or involuntarily, including any prepayment effected by the Investor's exercise of the acceleration clause in the Bond. (a) The prepayment fee due from the Issuer for each such advance payment shall be that amount calculated as follows: (i) compare the Initial Reference Rate, as defined herein, to the Final Reference Rate, as defined herein. If the Initial Reference Rate is less than or equal to the Final Reference Rate, the prepayment fee is zero, and (ii) if the Initial Reference Rate is greater than the Final Reference Rate, the prepayment fee shall be calculated as follows: (A) Calculate an amortization schedule using the Initial

Reference Rate, the amount of the principal prepayment, the prepayment date and the Bond maturity date. If the Fee End Date is prior to the Bond maturity date, assume for purposes of the calculation that all scheduled repayments of principal due on or after the Fee End Date are paid on the Fee End Date, (B) Calculate the interest payment(s) which will accrue on the advance payment(s) of principal through the Fee End Date at the Initial Reference Rate ("Initial Interest Amount(s)"), (C) Calculate the interest payment(s) which will accrue on the advance payment(s) of principal through the Fee End Date at the Final Reference Rate ("Final Interest Amount(s)"), (D) Calculate the "Differential Interest Amount" for each interest payment scheduled through the Fee End Date by subtracting the Final Interest Amount from the Initial Interest Amount for each such payment, and (E) the discounted present value of each Differential Interest Amount shall be calculated by using the Final Reference Rate as the discount rate. The prepayment fee shall be the sum of the discounted present value of each Differential Interest Amount. (b) The following terms shall have the meanings given below when used herein: (A) "Initial Reference Rate" means the annualized interest rate used by the Investor to obtain the Bond funds, which funds are being paid in advance of scheduled payment(s). (B) "Final Reference Rate" means the annualized interest rate Investor would allocate to fund a new bond, on the date of prepayment, with similar scheduled repayment of principal from the time of each such advance payment through the Fee End Date, assuming all scheduled repayments of principal due on or after the Fee End Date are paid on the Fee End Date. (C) Issuer shall not be charged a prepayment fee for advance payments of principal which, when considered on a cumulative basis, do not exceed ten percent of the then outstanding principal amount of the Bond and are directed by Issuer to be held for application on subsequently maturing installment payments in a funds held account which Investor, in its sole discretion, may establish and maintain.

7. **MANNER OF PAYMENT:** Issuer will pay the principal of and interest on this Bond by wire transfer of immediately available Federal funds to such accounts as shall be specified by the Investor, or in such other funds or in such other manner as may be mutually agreed upon by the Investor and the Issuer.

8. **DISBURSEMENTS OF PRINCIPAL:** Disbursement of the Principal Amount of this Bond will be made on the Disbursement Date(s) set forth in the Bond Purchase Agreement.

9. **EVENTS OF DEFAULT:** Events of Default under this Bond are as set forth in the Bond Purchase Agreement.

10. **REMEDIES:** Upon the occurrence of an Event of Default, the Investor may, at its option, exercise any or all of the rights and remedies set forth in the Bond Purchase Agreement. Investor may take any action or proceeding at law or in equity which it deems advisable for the protection of its interests to collect and enforce payment, and the Issuer shall pay all expenses, court costs and reasonable attorneys' fees incurred in connection with or arising out of any default hereunder.

11. **MODIFICATION:** No modification of this Bond, the Bond Purchase Agreement, the Bond Security Documents or any related document shall be enforceable unless in writing and signed by the party against whom enforcement is sought.

12. **FINANCIAL INFORMATION:** Investor, its agents, successors, or assigns may at any time directly or through a credit reporting agency verify or reverify any information, supplied by the Issuer to the Investor in the Issuer's bond application or otherwise provided to the Investor from any source in connection therewith. Investor, its agents, successors and assigns may report Issuer's name and information regarding this Bond and all of Issuer's past and future Bonds

to credit reporting agencies.

13. ASSIGNMENT OF BOND: The Investor may assign or otherwise transfer the Bond to any party including AgriBank, FCB and its successors, whether absolutely or as collateral security and whether in the ordinary course of business or otherwise, without Issuer's consent or approval. This Bond cannot be resold without registration under applicable Federal and State laws unless exemption from such registration requirements are then available.

14. UNAUTHORIZED DISPOSITIONS AND FALSE STATEMENTS: Issuer understands that it is a federal crime punishable by fine, imprisonment, or both to knowingly make any false statements in the Issuer's Bond application as applicable under the provisions of Title 18, United States Code, Section 1014. Issuer also understands that any unauthorized disposition of Collateral or the making of any false statement or report to the Investor in connection with a Bond could result in civil and criminal consequences to the Issuer as applicable under the provisions of Title 18, United States Code, Sections 658 and 1014.

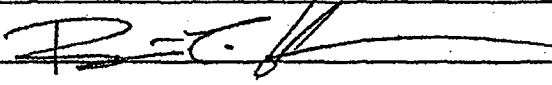
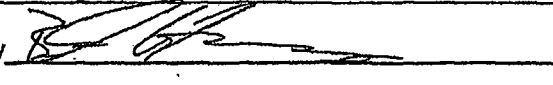
15. PARTIES BOUND: All covenants and agreements in this Bond contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the Investor and the permitted assigns of Issuer whether so expressed or not. As provided in the Bond Purchase Agreement, this Bond is transferable only on the Bond Register of the Issuer, upon joint written notice to the Issuer of such transfer by the holder of this Bond and the transferee. The Issuer may treat the Investor or registered holder as the owner hereof for the purpose of receiving payment and for all other purposes.

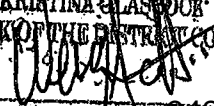
16. GOVERNING LAW: This Bond and the Bond Purchase Agreement shall be governed by, construed and enforced in accordance with the internal laws of the State of Minnesota without regard to its conflicts of laws principles.

IN WITNESS WHEREOF, Issuer has executed this Bond as of the Date of Issue set forth above.

ISSUER:

Gordon Paving Co., Inc., an Idaho Corporation
Northwest Sand & Gravel, Inc., an Idaho Corporation
Blackrock Land Holdings, LLC, an Idaho Limited Liability Company

By 	By 
Name: Brian Hansen, in his capacity as Secretary of Gordon Paving Company, Inc., Secretary of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, LLC	Name: Brandon Hansen, in his capacity as Vice President of Gordon Paving Company, Inc., Vice President of Northwest Sand & Gravel, Inc., Member of Blackrock Land Holdings, LLC

State of Idaho
County of Twin Falls
I hereby certify the foregoing to be a full, true
and correct copy of the original on file in the
above entitled action. **DATE** 10/18/11
KRISTINA GLASDOCK
CLERK OF THE DISTRICT COURT
By 
COURT SERVICES 342

PARCEL 1

Township 11 South, Range 18 East Boise Meridian, Twin Falls County, Idaho

Section 25: That part of the SW $\frac{1}{4}$ situated South of the Twin Falls Canal Co. Ltd., "High Line Canal" and West of Rock Creek;

EXCEPTING the following described parcel:

BEGINNING at the Southwest corner of Section 25, the TRUE POINT OF BEGINNING;

Thence North 424.12 feet along the Westerly boundary of said SW $\frac{1}{4}$;

Thence East 200.00 feet;

Thence South 3°20'19" East 428.71 feet to the Southerly boundary of said SW $\frac{1}{4}$;

Thence North 89°01'01" West 225.00 feet along the Southerly boundary of the SW $\frac{1}{4}$ to the True Point of Beginning.

AND EXCEPT that portion thereof more particularly described as follows:

Beginning at intersection of centerline of the High Line Canal and East right-of-way line of the present road, which point is approximately 668 feet North and 25 feet East from the Southwest corner of said Section;

Thence Northeasterly along the center line of said High Line Canal 14 feet, more or less, to a point which point bears South 89°17' East 35 feet from Road Station 363+47;

Thence South 0°43' West along a line parallel to and 35 feet Easterly from the centerline of said road 153 feet, more or less, to a point;

Thence South 5°59' West 100.5 feet more or less, to a point on the East right-of-way line of the present road;

THENCE North along said East right of way line 243 feet, more or less, to the Point of Beginning.

AND ALSO EXCEPT;

An irregular parcel of land on the Easterly side of the centerline of road as surveyed and shown on the official plat of Hansen-Rock Creek S-220(4) road survey on file in the office of Department of Public Works of the State of Idaho, and lying in a portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section, described as follows;

Beginning at a point on the Easterly right of way line of the present road, which point is approximately 925 feet North and 25 feet East from the Southwest corner of said Section, which point of beginning bears South 89°17' East 25 feet from road Station 361+00;

Thence South 5°00' East 100.5 feet, more or less, to a point;

Thence South 0°43' West along a line parallel to and 35 feet East from the centerline of road, 147 feet more or less to a point on the centerline of the High Line Canal;

Thence Southwesterly along the centerline of said canal 14 feet, more or less, to a point on the Easterly right-of-way line of the present road;

Thence North along the right-of-way line of the present road 257 feet, more or less, to the Point of Beginning.

SUBJECT TO: Twin Falls County Highway Right of Way

PARCELS 2, 3 & 4

A tract of land located in the Southwest Quarter and the Northwest Quarter of the Southeast Quarter of Section 7 and the Northwest Quarter of Section 18, Township 10 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho, more particularly described as follows;
Beginning at the Northwest corner of said SW1/4 Section 7;
Thence South 87°54'52" East a distance of 543.40 feet along the Northerly boundary of said SW1/4 to the True Point of Beginning;

Thence South 87°54'52" East along said Northerly boundary a distance of 849.17 feet to the Westerly edge of the rimrock of Rock Creek Canyon;
Thence Southerly along said Westerly rimrock the following courses and distances South 09°45'41" West a distance of 86.52 feet;
Thence South 14°23'00" West a distance of 97.35 feet;
Thence South 01°48'50" West a distance of 13.00 feet;
Thence South 61°59'10" West a distance of 25.00 feet;
Thence South 15°21'24" West a distance of 60.77 feet;
Thence South 25°12'16" East a distance of 45.00 feet;
Thence South 46°29'17" East a distance of 27.92 feet;
Thence South 16°28'44" West a distance of 64.42 feet;
Thence South 27°24'30" East a distance of 29.53 feet;
Thence South 29°33'58" East a distance of 38.62 feet;
Thence South 32°17'58" East a distance of 62.27 feet;
Thence South 16°50'57" East a distance of 67.45 feet;
Thence South 01°32'15" West a distance of 31.43 feet;
Thence South 22°23'46" East a distance of 33.20 feet;
Thence South 08°33'39" West a distance of 54.74 feet;
Thence South 04°45'32" East a distance of 86.83 feet;
Thence South 14°19'18" West a distance of 59.67 feet;
Thence South 87°24'41" East a distance of 16.37 feet;
Thence North 29°30'04" East a distance of 142.02 feet;
Thence South 47°03'18" East a distance of 97.64 feet;
Thence South 75°38'49" East a distance of 35.04 feet;
Thence South 54°50'04" East a distance of 66.71 feet;
Thence South 84°33'14" East a distance of 128.06 feet;
Thence South 81°52'10" East a distance of 152.91 feet;
Thence North 54°08'32" East a distance of 238.17 feet;
Thence South 45°21'15" East a distance of 26.36 feet;
Thence South 32°50'59" West a distance of 115.20 feet;
Thence South 20°57'01" West a distance of 112.56 feet;
Thence South 09°25'30" West a distance of 192.24 feet;
Thence South 01°36'52" West a distance of 71.91 feet;
Thence South 04°55'04" West a distance of 128.65 feet to the Southerly boundary of said NW1/4 SE1/4 Section 7;

Thence North 88°55'25" West a distance of 168.46 feet along said Southerly boundary to the Northeast corner of the SE1/4 SW1/4 of said Section 7;

Thence South 00°29'21" West a distance of 1,042.17 feet along the Easterly boundary of said SE1/4

SW1/4;

Thence North 89° 59'06" West a distance of 323.65 feet;

Thence South 00°28'04" West a distance of 403.73 feet to the Northerly right of way boundary of U.S. Highway 93 /30;

Thence North 89°41'24" West a distance of 1,515.78 feet along said Northerly right of way boundary to the Westerly boundary of said Section 18;

Thence North 00°17'19" East a distance of 140.76 feet along the Westerly boundary of said Section 18 to the corner common to Sections 7, 18 and 12;

Thence North 00°16'30" East a distance of 1,094.85 feet;

Thence South 87°59'34" East a distance of 542.63 feet;

Thence North 00°18'08" East a distance of 1,566.09 feet to the True Point of Beginning.

EXCEPTING THEREFROM; Section 18, Township 10 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho, more particularly described as follows; a parcel of land located in the NW1/4 SE1/4

PARCEL 5

Township 9 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho

Section 13: A parcel of land located in the the NW1/4 of said Section 13, more particularly described as follows:

Commencing at the Northwest corner of Section 13, said point lies North 89°50'00" West 2604.03 feet from the North quarter corner of Section 13;

Thence South 89°50'00" East, 438.56 feet to the Real Point of Beginning;

Thence South 89°50'00" East, 1993.12 feet;

Thence South 14°34'53" West, 221.74 feet;

Thence North 88°18'33" West, 133.01 feet;

Thence South 79°20'17" West, 260.92 feet;

Thence South 83°34'47" West, 105.91 feet;

Thence South 78°42'40" West, 165.35 feet;

Thence south 83°14'49" West, 193.47 feet;

Thence North 75°35'08" West, 650.46 feet;

Thence North 72°44'20" West, 257.23 feet;

Thence North 66°17'17" West, 232.39 feet to the Real Point of Beginning.

SUBJECT TO: Highway Right of Way

PARCEL 6A

Township 9 South, Range 15 East Boise Meridian, Twin Falls County, Idaho

Section 12: a tract of land located in the S1/4 more particularly described as follows;

Beginning at the South quarter corner of said Section 12;

Thence North 89°26'30" West a distance of 2172.02 feet along the Southerly boundary of the SW1/4 of said Section 12 to the Easterly boundary of the County Road;

Thence North 62°38'53" West a distance of 118.81 feet along the Easterly boundary of said County Road;

Thence Northwesterly 391.42 feet on the arc of a curve to the right with a radius of 256.43 feet, a central angle of 87°27'27"

and a chord which bears North 18°55'09" West a distance of 354.51 feet to a point of curvature on said East right-of-way line;

Thence North 24°48'34" East a distance of 59.62 feet along said Easterly right-of-way boundary;
Thence North 65°11'26" West a distance of 5.00 feet along said Easterly right-of-way boundary;
Thence North 24°48'34" East a distance of 33.05 feet along said Easterly right-of-way boundary;

Thence South 64°36'45" East a distance of 32.33 feet;
Thence North 52°40'52" East a distance of 58.39 feet;
Thence North 40°31'43" East a distance of 83.27 feet;
Thence North 50°26'48" East a distance of 30.00 feet;
Thence North 83°19'26" East a distance of 81.70 feet;
Thence South 88°26'48" East a distance of 135.39 feet;

Thence South 85°35'28" East a distance of 122.43 feet;
Thence South 83°52'11" East a distance of 118.90 feet;
Thence South 81°48'43" East a distance of 428.32 feet;
Thence South 80°11'24" East a distance of 1351.11;
Thence North 86°27'27" East a distance of 461.25 feet;
Thence South 15°01'25" West a distance of 337.72 feet to a point on the Southerly boundary of said Section 12;

Thence North 89°24'28" West a distance 379.76 feet along the Southerly boundary of said Section to the True Point of Beginning.

PARCEL 6B

AND ALSO INCLUDING an easement for the purpose of ingress, egress and utilities over a strip of ground 60 feet in width located in the S½ of Section 12, Township 9 South, Range 15 East Boise Meridian, Twin Falls county Idaho, more particularly described as follows:

Beginning at the South quarter corner of said Section 12;

Thence South 89°24'28" East a distance of 379.76 feet along the Southerly boundary of the SE¼ of said Section 12;
Thence North 15°01'25" East a distance of 274.43 feet to the True Point of Beginning;
Thence South 86°27'27" West a distance of 448.12 feet;
Thence North 80°11'24" West a distance of 1357.28 feet;
Thence North 81°48'43" West a distance of 426.39 feet;
Thence North 83°52'11" West a distance of 116.93 feet;
Thence North 85°35'28" West a distance of 120.03 feet;
Thence North 88°26'48" West a distance of 129.58;
Thence South 83°19'26" West a distance of 59.68 feet;
Thence South 50°26'48" West a distance of 7.09 feet;
Thence South 40°31'43" West a distance of 84.45 feet;
Thence South 52°40'52" West a distance of 101.33 feet;
Thence South 88°00'08" West a distance of 70.90 feet;

Thence North 24°48'34" East a distance of 59.62 feet;
Thence North 65°11'26" West a distance of 5.00 feet;
Thence North 24°48'34" East a distance of 33.05 feet;
Thence South 64°36'45" East a distance of 32.33 feet;
Thence North 52°40'52" East a distance of 58.39 feet;
Thence North 40°31'43" East a distance of 83.27 feet;
Thence North 50°26'48" East a distance of 30.00 feet;
Thence North 83°19'26" East a distance of 81.70 feet;

Thence south 88°26'48" East a distance of 135.39 feet;
Thence South 85°35'28" East a distance of 122.43 feet;
Thence South 83°52'11" East a distance of 118.90 feet;

Thence South $81^{\circ}48'43''$ East a distance of 428.32 feet;
Thence South $80^{\circ}11'24''$ East a distance of 1351.11 feet;
Thence North $86^{\circ}27'27''$ East a distance of 461.25 feet;
Thence South $15^{\circ}01'25''$ West a distance of 63.29 feet to the True Point of Beginning.

PARCEL 8

Township 12 South, Range 18 East Boise Meridian, Twin Falls County, Idaho
Section 13: A parcel of land described on Reclamation Plan No. RP-849 and more particularly described as follows:

Starting at a point located in the Southeast corner of the $W\frac{1}{2}SE\frac{1}{4}$ as the True Point of Beginning;

Thence North parallel to the Section line 300 feet;
Thence West parallel to the Section line 1452 feet;
Thence parallel to the Section line 300 feet;
Thence East along the Southerly Section line 1,452 feet to the True Point of Beginning, as shown on Reclamation Plan No. RP-489.

PARCEL 10 (A)

Township 11 South, Range 18 East Boise Meridian, Twin Falls County, Idaho
Section 35: A parcel of land in the $SE\frac{1}{4}NE\frac{1}{4}$ more particularly described as follows:
Beginning at a point on the East Section line of Section 35 located approximately 1,889.51 feet South of the Northeast corner of said Section 35;
Thence North $82^{\circ}45'$ West approximately 513.79 feet to the Real Point of Beginning;
thence Northwest along a 1116.28 foot radius curve right having a long chord of 297.52 feet bearing North $75^{\circ}05'39''$
West approximately 298.32 feet to a point of tangency;

Thence North $67^{\circ}26'$ West approximately 197.68 feet;
Thence North $02^{\circ}07'36''$ West approximately 294.26 feet;
Thence South $39^{\circ}25'40''$ East approximately 55.25 feet;
Thence South $46^{\circ}02'54''$ East approximately 91.57 feet;
Thence South $48^{\circ}46'15''$ East approximately 157.60 feet;
Thence South $47^{\circ}15'48''$ East approximately 298.78 feet;
Thence South $51^{\circ}19'59''$ East approximately 53.76 feet to the Real Point of Beginning.

PARCEL 10 (B)

Township 11 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho
Section 35: A parcel of land in the $NW\frac{1}{4}NE\frac{1}{4}$ and the $NE\frac{1}{4}NE\frac{1}{4}$ and the $SE\frac{1}{4}NE\frac{1}{4}$ and being more particularly described as follows:

Commencing at the Northeast corner of Section 35;
Thence a distance of 1500.00 feet on a bearing of South along the East boundary of said Section 35; thence a distance of 803.92 feet on a bearing of North $89^{\circ}30'34''$ West to the Real Point of Beginning;
Thence from this Real Point of Beginning a distance of 1363.51 feet on a bearing of North $16^{\circ}14'53''$ West to the Southerly right of way of the Twin Falls Canal Company's High Line Canal;
Thence along the said Southerly right of way of the Twin Falls Canal Company's High Line Canal the following courses and distances;
North $58^{\circ}59'11''$ West 107.75 feet;
North $49^{\circ}07'49''$ West 83.96 feet;
North $39^{\circ}22'26''$ West 108.15 feet to the North boundary of said Section 35;
Thence a distance of 345.60 feet on a bearing of North $89^{\circ}35'57''$ West along the North boundary of said Section 35;

Thence along the centerline of an existing irrigation ditch the following courses and distances:
 South 00°12'00" West 487.62 feet;
 South 13°16'55" East 32.74 feet;
 South 35°35'01" East 43.54 feet;
 South 46°04'51" East 161.11 feet;
 South 48°27'50" East 79.80 feet;
 South 50°46'22" East 269.87 feet;
 South 39°08'16" East 32.21 feet;
 South 33°22'27" East 332.39 feet;
 South 34°56'08" East 168.68 feet;
 South 39°25'40" East 132.39 feet;
 South 46°02'54" East 91.57 feet;
 South 48°46'15" East 70.21 feet;
 Thence a distance of 50.00 feet on a bearing of North 41°13'45" East to the Real Point of Beginning.

PARCEL 10 (C)

Township 11 South, Range 18 East Boise Meridian, Twin Falls County, Idaho
 Section 35: A parcel of land in the SE¼NE¼ more particularly described as follows:
 Commencing at the Northeast corner of Section 35;
 Thence a distance of 1,500.00 feet on a bearing of South along the East boundary of said Section 35 to the Real Point of Beginning;
 Thence from the Real Point of Beginning a distance of 803.92 feet on a bearing of North 89°30'34" West;
 Thence a distance of 50.00 feet on a bearing of South 41°13'45" West
 Thence along the centerline of an existing irrigation ditch the following courses and distances;
 South 48°46'15" East 87.39 feet;
 South 47°15'48" East 298.78 feet;
 South 51°19'59" East 144.13 feet
 South 61°52'29" East 128.44 feet;
 Thence South 82°45'09" East 299.86 feet;
 South 89°30'34" East 28.40 feet to the East boundary of said Section 35;
 Thence a distance of 479.75 feet on a bearing of North along the East boundary of said Section 35 to the Real Point of Beginning.

EXCEPT

A Parcel of land in the SE¼NE¼ Section 35, Township 11 South, Range 18 E., B.M., Twin Falls County, Idaho, and being more particularly described as follows:
 Commencing at the Northeast corner of Section 35;
 Thence South a distance of 1889.33 feet along the East boundary of said Section 35 to the North boundary of a 60-foot-wide public road right of way and the Real Point of Beginning;
 Thence from the Real Point of Beginning and continuing along the said East boundary of Section 35 South a distance of 60.48 feet to the South boundary of a 60-foot-wide public road right of way;
 Thence along the South boundary of a 60-foot-wide public road right of way North 82°45'00" West a distance of 411.00 feet to the centerline of an irrigation ditch that existed in 1976;
 Thence along the centerline of an irrigation ditch that existed in 1976 the following courses and distances:
 North 61°52'59" West 35.68 feet;
 North 51°19'59" West 90.94 feet to the North boundary of a 60-foot-wide public road right of way;
 Thence along the North boundary of a 60-foot-wide public road right of way on a curve to the left having a central angle of 00°50'03"; a radius of 1115.92 feet; a tangent of 8.12 feet; and arc length of 16.25 feet and a long chord of 16.25 feet on a bearing of South 82°19'58" East;
 Thence continuing along the North boundary of a 60-foot-wide public road right of way South 82°45'00" East a distance of 498.02 feet to the Real Point of Beginning.

SUBJECT TO a right of way 25 feet in width for the purpose of constructing and maintaining a public road along the East boundary thereof.

AND EXCEPT

A parcel of land in the SE¼NE¼, Section 35, Township 11 South, Range 18 E., B.M., Twin Falls County, Idaho, and being

more particularly described as follows:

Commencing at the Northeast corner of Section 35;

Thence South a distance of 1949.81 feet along the East boundary of said Section 35 to the Real Point of Beginning;

Thence from the Real Point of Beginning and continuing along the East boundary of Section 35 a distance of 29.94 feet;

Thence along the centerline of an irrigation ditch that existed in 1976 the following courses and distances;

North 89°30'34" West 28.40 feet;

North 82°45'09" West 299.86 feet;

North 61°52'29" West 92.76 feet to the South boundary of a 60-foot-wide public road right of way;

Thence along the South boundary of a 60-foot-wide public road right of way South 82°45'00" East a distance of 411.00 feet to the Real Point of Beginning.

SUBJECT TO a right of way 25 feet in width for the purpose of constructing and maintaining a public road along the East boundary thereof.

AND ALSO EXCEPT

A Parcel of land in the SE¼NE¼ Section 35, Township 11 South, Range 18 E., B.M., being 30 feet in width on each side of the following described centerline;

Beginning at a point on the East section line of Section 35 located approximately 1919.57 feet South of the Northeast corner of said Section 35;

Thence North 82°45' West approximately 468.4 feet to the centerline of an existing ditch;

Thence North 82°45' West approximately 33.44 feet to a point of curvature;

Thence Northwest along a 5° curve right having a central angle of 15°19' approximately 306.3 feet to a point of tangency;

Thence North 67°26' West approximately 222.6 feet to a point of curvature;

Thence Northwest along a 4° curve left having a central angle of 13°16'

approximately 331.7 feet to a point on curve, said point being on the West line of the SE¼NE¼ of said Section 35 located approximately 1677.63 feet North 51°45'16" West of the East quarter corner of said Section 35.

PARCEL 10 (D)

Township 11 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho

Section 35: A parcel of land in the NE¼NE¼ and the SE¼NE¼ and being more particularly described as follows:

Commencing at the Northeast corner of Section 35;

Thence a distance of 238.00 feet on a bearing of 89°35'37" West along the North boundary of said Section 35 to the Real Point of Beginning;

Thence from this Real Point of Beginning and continuing along the North boundary of Section 35 a distance of 343.81 feet on a bearing of North 89°35'37" West to the Southerly right of way of the Twin Falls Canal Company's High Line Canal;

Thence along the said Southerly right of way of the Twin Falls Canal Company's High Line Canal the following courses and distances;

South 41°39'03" West 160.59 feet;

South 58°00'40" West 143.60 feet;

South 71°23'46" West 80.59 feet;

South 81°53'16" West 50.72 feet;

North 87°08'07" West 124.86 feet;

North 74°43'29" West 126.09 feet;

North 58°59'11" West 2.50 feet;

Thence a distance of 1363.51 feet on a bearing of South 16°14'53" East;

Thence a distance of 803.92 feet on a bearing of South 89°30'34" East to the East boundary of said Section 35;

Thence along the said East boundary of Section 35 a distance of 1024.00 feet on a bearing of North;

Thence a distance of 238.00 feet on a bearing of North 89°35'37" West;

Thence a distance of 476.0 feet on a bearing of North to the Real Point of Beginning.

The land referred to is described as follows:

TOWNSHIP 12 SOUTH, RANGE 22 EAST, BOISE MERIDIAN, CASSIA COUNTY, IDAHO

Section 21: Part of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and all of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and part of the NE $\frac{1}{4}$ SW $\frac{1}{4}$, more particularly described as follows:

Beginning at the East 1/4 Section corner of said Section 21, said corner marked by a 5/8" rebar with a 3" cap on top of a US GLO iron pipe with brass cap which shall be the Point of Beginning:

Thence South 00°26'08" East along the East line of Section 21 for a distance of 30.00 feet;

Thence North 88°36'53" West (N 88°31'13" W, rec.) for a distance of 27.59 feet to a 1/2" rebar;

Thence North 88°36'53" West (N 88°31'13" W, rec.) for a distance of 173.81 feet to a 1/2" rebar;

Thence South 01°58'20" West (S 2°04'00" W, rec.) for a distance of 223.05 feet to a 1/2" rebar;

Thence South 31°11'36" West (S 31°25'17" W, rec.) for a distance of 151.12 feet (150.58', rec.) to a 1/2" rebar;

Thence South 40°09'49" East (S 40°03'36" E, rec.) for a distance of 186.16 feet to a 1/2" rebar on the West Right-of-Way of State

Highway 27;

Thence South 33°39'41" West along said highway Right-of-Way for a distance of 957.75 feet to a concrete Right-of-Way marker on the South line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Thence North 89°25'23" West along the South line of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ for a distance of 1946.35 feet to a 5/8" rebar at the SW corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Thence North 89°25'23" West for a distance of 23.36 feet to a 1/2" rebar;

Thence North 00°20'27" West for a distance of 1323.00 feet to a 1/2" rebar on the North line of the NE $\frac{1}{4}$ SW $\frac{1}{4}$;

Thence South 89°26'30" East along the North line of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ for a distance of 22.58 feet to the Center 1/4 corner of Section 21;

Thence South 89°26'30" East along the NW $\frac{1}{4}$ SE $\frac{1}{4}$ for a distance of 2654.88 feet to the Point of Beginning.

ALL IN CASSIA COUNTY, STATE OF IDAHO

Exhibit B

Bradley J. Dixon, ISB No. 6167
E-mail: bjdixon@stoel.com
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

SEP 30 2013

11:30 AM

By _____ Clerk

Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

Case No. CV 12-2731

**ORDER GRANTING MEMORANDUM
OF COSTS AND FEES**

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

This matter having come before the Court on Plaintiff's, AgStar Financial Services ACA, Memorandum of Costs and Attorney Fees and the supporting Affidavit of Bradley J. Dixon, no objection having been presented to the Court and good cause appearing, therefore,

IT IS HEREBY ORDERED that costs are awarded to the Plaintiff in the amount of \$20,593.01 and fees are awarded to Plaintiff in the amount of \$39,030.50.

ORDER GRANTING MEMORANDUM OF COSTS AND FEES - 1

74678152.1 0047071-00001

DATED: September 30, 2013.

Randy J. Stoker

Judge Randy Stoker

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30 day of September, 2013, I served a true and correct copy of the foregoing **ORDER GRANTING MEMORANDUM OF COSTS AND FEES** in the above-entitled matter as follows:

Matthew C. Darrington, Esq.
ANTHON DARRINGTON PLLC
P.O. Box 536
Rupert, ID 83350

*Attorneys for Defendants:
Northwest Sand & Gravel, Inc.
Gordon Paving Company, Inc.
Blackrock Land Holdings, LLC*

Bradley J. Dixon
Stoel Rives LLP
101 S. Capitol Blvd
Suite 1900
Boise, ID 83702

Attorneys for AgStar Financial Services, ACA

By: s/ dme
CLERK OF THE COURT

Exhibit C

AGSTAR v. NORTHWEST SAND AND GRAVEL
Fifth Judicial District Court - No. CV-2012-2731

EXHIBIT C - ATTORNEY FEES

Affidavit of Bradley J. Dixon

DATE	ATTORNEY	HOURS	FEES	DESCRIPTION
6/20/2013	BJD	3.8	\$1,368.00	Receive and review entered judgment and decree of foreclosure; conference with opposing counsel re sale date; conference with defendant investor re sale date and settlement potential
6/21/2013	BJD	0.1	\$36.50	Correspond with client re bankruptcy potential issues
6/21/2013	BMS	3.9	\$682.50	Draft writ of execution, order of sale, notice of levy and notice of sale
6/24/2013	BJD	0.9	\$324.00	Conference call with A. Oulman; receive and review correspondence from A. Oulman; forward same to client
6/27/2013	EXE	0.4	\$176.00	Teleconference with Brad Dixon re possible bankruptcy filing
6/27/2013	BMS	1.9	\$332.50	Finalize memorandum of costs and fees, affidavit and exhibits in support; draft third party subpoena duces tecums and deposition notices
6/27/2013	BJD	4.8	\$1,728.00	Prepare for and attend strategy call with client; conference with E. Eliassen re bankruptcy issues; conference call with A. Oulman; conference call with opposing counsel; coordinate drafting and service of AR holder subpoenas
6/28/2013	BJD	2.6	\$936.00	Draft and revise notice of sale, order of sale, writ of execution and notice of levy; communicate with defendant investor
7/1/2013	BMS	2.7	\$472.50	Telephone correspondence with James Warner re subpoena; telephone correspondence with Brian Tippmann re subpoena; telephone call correspondence with McAlvain Construction re subpoena; draft and analyze subpoena tracking chart
7/1/2013	BJD	3.3	\$1,188.00	Coordinate settlement conference; conference with opposing counsel re settlement potential; conference with financier; review documents from third party subpoenas
7/2/2013	EXE	0.8	\$352.00	Teleconference with Brad Dixon and AgStar team regarding bankruptcy options
7/2/2013	BMS	2.5	\$437.50	Release third party subpoena recipients from depositions via email and/or telephone upon receipt of documentation; analyze documents received
7/2/2013	BJD	2.1	\$756.00	Review and analyze subpoena documents received from AR holders
7/8/2013	BMS	0.7	\$122.50	Draft instruction letter to Twin Falls County Sheriff
7/10/2013	EXE	4	\$1,760.00	Travel to Boise; prepare for meeting with Northwest Sand & Gravel
7/11/2013	BJD	2.1	\$756.00	Correspond with co-counsel re settlement conference; review foreclosure document re deadline to foreclose; review rules for recovery of garnished payment

7/11/2013	EXE	7	\$3,080.00	Attend meeting with Northwest Sand & Gravel; prepare for same; travel from Boise to Seattle
7/15/2013	EXE	0.2	\$88.00	Teleconference with Brad Dixon re settlement
7/16/2013	EXE	2.5	\$1,100.00	Draft and edit forbearance agreement
7/17/2013	EXE	2.6	\$1,144.00	Draft and edit forbearance agreement; call to Todd Kampa
7/18/2013	EXE	0.5	\$220.00	Edit forbearance agreement
7/19/2013	EXE	0.1	\$44.00	Call to Todd Kampa
7/22/2013	EXE	1.3	\$572.00	Review comments to the forbearance agreement; emails re same; review DACA; edit forbearance agreement
7/23/2013	EXE	1.8	\$792.00	Edit forbearance agreement; teleconference re same
7/24/2013	EXE	0.6	\$264.00	Edit forbearance agreement; teleconference with Todd Kampa re same
7/25/2013	BJD	1.2	\$432.00	Review statute re garnishments and bond documentation regarding priority; correspond with opposing counsel re same
7/26/2013	EXE	0.1	\$44.00	Emails re forbearance agreement
7/26/2013	BJD	0.2	\$72.00	Follow up with opposing counsel re garnishment
7/29/2013	EXE	0.1	\$44.00	Emails re forbearance agreement
7/31/2013	EXE	0.3	\$132.00	Emails re forbearance agreement; teleconference with Matt Darrington
8/1/2013	EXE	0.9	\$396.00	Edit forbearance agreement; emails re same
8/1/2013	BJD	1.6	\$576.00	Review and analyze correspondence from opposing counsel re due diligence on work out agreement; correspond with counsel for Idaho Asphalt; correspond with client re status of Idaho Asphalt garnishment
8/2/2013	BJD	0.2	\$72.00	Correspond with client re status of settlement efforts and equipment sales
8/2/2013	EXE	0.4	\$176.00	Edit forbearance agreement; emails re same
8/5/2013	EXE	0.4	\$176.00	Emails re forbearance agreement
8/8/2013	EXE	0.4	\$176.00	Edit forbearance agreement; emails with Todd Kampa
8/9/2013	EXE	0.2	\$88.00	Emails with Todd Kampa re forbearance agreement
8/12/2013	EXE	1	\$440.00	Edit forbearance agreement
8/13/2013	EXE	0.9	\$396.00	Edit forbearance agreement
8/16/2013	BJD	0.2	\$72.00	Follow up with counsel for Idaho Asphalt; provide update re same to client
8/16/2013	EXE	0.2	\$88.00	Emails re forbearance agreement; finalize same
8/18/2013	EXE	0.1	\$44.00	Review litigation update; email re same
8/21/2013	EXE	0.1	\$44.00	Email re forbearance agreement
8/26/2013	EXE	0.1	\$44.00	Review email from Todd Kampa re forbearance agreement
8/26/2013	BJD	0.3	\$108.00	Analyze issues re needed information for Idaho Asphalt; correspond with client re same

8/26/2013	KHK	1.1	\$242.00	Researching issue of priority of secured party (AgStar) over garnishment of judgment creditor Idaho Asphalt Supply
8/27/2013	EXE	0.1	\$44.00	Emails re forbearance agreement and litigation report
8/27/2013	KHK	1.3	\$286.00	Preparing email memorandum to Brad Dixon re garnishment question
8/27/2013	KHK	4.7	\$1,034.00	Research of whether AgStar can recoup money lost through Idaho Asphalt's garnishment of NW Sand and Gravel's account, and how it can be recouped
8/28/2013	KHK	0.2	\$44.00	Speaking with Idaho Asphalt counsel Curt Thomsen on Gordon Paving case--said he emailed Brad back about it--will consider turning over money with proof of security interest
8/28/2013	BJD	0.2	\$72.00	Conference with co-counsel re procedure for recovering garnished dollars
8/28/2013	KHK	0.4	\$88.00	Preparing paperwork for motion to intervene
8/28/2013	KHK	0.7	\$154.00	Preparing and sending email to Idaho Asphalt counsel Curt Thomsen re AgStar's security interest
8/29/2013	KHK	0.1	\$22.00	Emailing Curt Thomsen (ID Asphalt) and Brad Dixon re returning AgStar's funds; Curt Thomsen wants more information regarding the origin of the funds garnished
9/3/2013	BJD	0.2	\$72.00	Provide update to client re Idaho Asphalt
9/4/2013	KHK	0.1	\$22.00	Phone call to Idaho Asphalt counsel Curt Thomsen re how his client wants to proceed with funds garnished from AgStar's deposit accounts; left voicemail
9/5/2013	KHK	0.1	\$22.00	Emailing Brad Dixon and opposing counsel re UCC Financing statement
9/7/2013	KHK	1.8	\$396.00	Drafting memorandum in support of motion to intervene
9/9/2013	KHK	10	\$2,200.00	Drafting memorandum in support of motion to intervene; finalizing research related to memo
9/10/2013	EXE	0.2	\$88.00	Emails re litigation update and sale process
9/10/2013	BJD	0.3	\$108.00	Review and analyze correspondence concerning status of forbearance agreement
9/10/2013	KHK	2.3	\$506.00	Reviewing memorandum in support of motion to intervene; adding additional arguments and authorities
9/11/2013	EXE	0.2	\$88.00	Teleconference with Brad Dixon re forbearance agreement
9/11/2013	BJD	3.8	\$1,368.00	Conference call with client re Chobani AR; conference call with co-counsel re AR; conference call with opposing counsel re Chobani AR and defendant payroll issues; conference with client re status update; review foreclosure documents and prepare same for filing in the event of default
9/12/2013	EXE	0.8	\$352.00	Teleconferences with Matt Darrington, Brad Dixon and Todd Kampa; emails re forbearance agreement

9/12/2013	BJD	3.2	\$1,152.00	Conference with client re payroll and AR issues; conference with opposing counsel re case status and payment of dollars agreed to under the forbearance agreement; analyze issues re default under the forbearance agreement; draft correspondence to opposing counsel
9/16/2013	EXE	0.4	\$176.00	Teleconferences re forbearance agreement
9/17/2013	EXE	0.1	\$44.00	Emails regarding Chobani receivable
9/17/2013	BJD	2.2	\$792.00	Conference with client re Chobani AR; conference call with opposing counsel re AR and payroll issues; draft and revise correspondence to opposing counsel confirming agreement; finalize sheriff sale documents
9/18/2013	BJD	0.2	\$72.00	Respond to client inquiry re Chobani AR; leave message for opposing counsel re agreement on AR usage
9/18/2013	EXE	0.4	\$176.00	Emails re liquidation values of guarantors
9/20/2013	BJD	1.3	\$468.00	Communicate with opposing counsel re status of AR and payroll arrangement; correspond with client re same;
9/22/2013	BJD	0.2	\$72.00	Correspond with client re case status
9/23/2013	EXE	1.8	\$792.00	Participate in teleconference with Brad Dixon, Todd Kampa and Joe Oliver; draft notice of default under forbearance agreement
9/23/2013	BJD	4.8	\$1,728.00	Conference call with client re case status and plan for termination of forbearance agreement; review and analyze default correspondence; review and analyze decree of foreclosure; research necessity for renewing decree of foreclosure; finalize sale package; begin instruction letter to sheriff; draft and revise order re fees and costs
9/24/2013	KHK	0.1	\$22.00	Email to Brad Dixon re most financing statement from client
9/24/2013	EXE	0.1	\$44.00	Emails re default notice
9/24/2013	BJD	1.2	\$432.00	Correspond with client re decree of foreclosure; review file re same; correspond with client re next steps in litigation and potential costs related to foreclosure sale or bankruptcy action
9/25/2013	EXE	0.2	\$88.00	Teleconference with Matt Darrington; email to Joe Oliver and Todd Kampa
9/25/2013	BJD	1.8	\$648.00	Conference call with opposing counsel re status of forbearance; conference call with client re same; draft and revise correspondence to opposing counsel re status of forbearance
10/1/2013	BJD	2.1	\$756.00	Respond to inquiries from Twin Falls County sheriff and provide additional documentation re same; correspond with opposing counsel re notice of sale; conference with counsel for Wells Fargo; follow up on UCC continuation statement
10/2/2013	KHK	0.8	\$176.00	Emails to Brad Dixon and counsel for Idaho Asphalt supply re financing statement continuations and no notice to AgStar re garnishment

10/2/2013	BJD	4.3	\$1,548.00	Review proposed memorandum to counsel for Idaho Asphalt; prepare finalized packet for Twin Falls sheriff; review UCC continuation statement; conference with opposing counsel re status of equipment sale and foreclosure
10/3/2013	BJD	0.4	\$144.00	Correspond with client re case status; leave message for opposing counsel re status of information and Chobani AR
10/7/2013	BJD	2.3	\$828.00	Draft and revise notice of levy and notice of sale consistent with requirements from Sheriff; contact opposing counsel re equipment sale; review bankruptcy docket; correspond with client re same
10/8/2013	BJD	2.7	\$972.00	Work with Twin Falls Sheriff regarding property descriptions; correspond with client re same; conference call with K. MacConnell, counsel for Wells Fargo
10/9/2013	BJD	1.4	\$504.00	Respond to inquiries from the Twin Falls County Sherriff; research re sale of parcels in two separate counties
10/10/2013	KHK	2.1	\$462.00	Reviewing arguments in motion to intervene re due process; discussions with Christopher Pooser and Brad Dixon re the same
10/10/2013	BJD	2.8	\$1,008.00	Respond to inquiries from the sherrif; conference with opposing counsel re Ritchie Brothers auction; call with K. MacConnell re equipment sale
10/14/2013	KHK	0.1	\$22.00	Discuss motion to intervene with Brad Dixon; email memorandum in support of motion to Editing
10/17/2013	BJD	0.3	\$108.00	Conferece call with opposing counsel re equipment sale and inquiry from potential property purchaser
10/21/2013	KHK	0.6	\$132.00	Review Editing's changes to memorandum in support of motion to intervene; finalize motions and supporting documents; email to Brad Dixon re the same
10/23/2013	BJD	3.4	\$1,224.00	Correspond with K. MacConnel, counsel for Wells Fargo re equipment sale; follow up with opposing counsel re same; review and analyze equipment list; begin draft of sheriff sale notice for equipment/UCC sale
10/30/2013	BJD	0.3	\$108.00	Communicate with opposing counsel re equipment sale
10/31/2013	BJD	0.8	\$288.00	Conference call with counsel for Ritchie Brothers re status of sale; provide counsel copies of judgment, notice of sale and equipment list
11/4/2013	BJD	2.8	\$1,008.00	Draft and revise incorporation documents for single purpose entity
11/6/2013	KHK	0.2	\$44.00	Review and approve motion to intervene for filing
11/6/2013	BJD	0.2	\$72.00	Respond to client inquiry re Idaho Asphalt recovery
11/8/2013	KHK	0.2	\$44.00	Finalize notice of hearing, motions, and memorandum in support of motion to intervene

11/11/2013	BJD	4.8	\$1,728.00	Finalize incorporation documents for SPE; draft and revise bidding strategy memorandum for client; research bidding statutes re same; attend to foreclosure sale issues
11/12/2013	BJD	4.3	\$1,548.00	Prepare for and attend teleconference with client re property sale strategies and valuation; correspond with T. Anderson re SPE organization documents; draft and revise prepayment premium affidavit; correspond with client re calculation of prepayment premium
11/13/2013	KHK	1.8	\$396.00	Research re purchaser's right to rents during redemption period
11/13/2013	BJD	4.7	\$1,692.00	Conference call with client re prepayment premium issues; work on prepayment premium calculation; draft and revise affidavit re same; review and analyze judgment re prepayment premium; review and analyze credit bid concurrence from USDA
11/14/2013	KHK	1.1	\$242.00	Draft and send brief memo re purchaser's right to rents during redemption period to Brad Dixon
11/14/2013	BJD	3.3	\$1,188.00	Finalize and file affidavit re prepayment premium; deal with inquiry from Twin Falls County; prepare for foreclosure sale
11/19/2013	BJD	3.2	\$1,152.00	Conference call with opposing counsel re payoff amounts; conference call with deputy re foreclosure sale; prepare calculations for potential combinations of sales at the foreclosure sale
11/21/2013	KHK	6.4	\$1,408.00	Sheriff's sale and travel to and from; emails to Sheryl Gillogly re certificate of sale and list of bidders
11/21/2013	BJD	8.3	\$2,988.00	Prepare for and travel to foreclosure sale; attend foreclosure sale; meetings with client re same; discussion with USDA
11/22/2013	BJD	2.1	\$756.00	Draft and revise certificate of sale; research re replevin motion; research re rental price issues
11/25/2013	BJD	3.2	\$1,152.00	Draft and revise assignment of judgment; draft and revise motion to alter real party in interest; research re SPE environmental issues
11/26/2013	BJD	2.1	\$756.00	Coordinate with opposing counsel re possession follow up property; research re setting rental amounts; conference call with realtor in Twin Falls
12/3/2013	KHK	0.3	\$66.00	Begin research re levy on equipment of debtors
12/4/2013	BJD	1.1	\$396.00	Review and analyze opposition to recovery of Idaho Asphalt dollars; conference with co-counsel re same; research statute re garnishment; review and analyze executed return of service and certificate of sale; correspond with client re same
12/5/2013	KHK	5.1	\$1,122.00	Prepare for hearing on motion to intervene; continue research re levy on equipment of debtors; draft documents for levy on equipment; email to Brad Dixon re the same; review Defendants' supplemental request for production

12/6/2013	BJD	2.7	\$972.00	Review and approve supplemental discovery responses regarding appraisal; communicate with opposing counsel re rental payments, equipment sale and royalty fees
12/9/2013	KHK	2.7	\$594.00	Research re motion for attachment of Chobani accounts receivable; email to Brad Dixon re the same
12/13/2013	BJD	0.7	\$252.00	Correspond with client re personal property security; review statute re sheriff authority to seize supporting documentation
12/13/2013	KHK	3.1	\$682.00	Discuss with Brad Dixon re equipment levy, motion for possession, motion for execution on Chobani account receivable; finalize documents for sheriff's sale of equipment; draft motion for possession of real property collateral; email to Brad Dixon re the same
12/16/2013	KHK	4.5	\$990.00	Draft letter to Chobani re execution on account receivable; discuss with Brad Dixon re motion for writ of assistance and levy on equipment; finalize and file motion for writ of assistance; finalize documents for writ of execution for levy on equipment
12/18/2013	BJD	2.1	\$756.00	Respond to inquiries from client and USDA; research re redemption and bid strategies based on questions from USDA
12/26/2013	KHK	3.5	\$770.00	Prepare affidavit and exhibit in support of writ of assistance regarding royalty payments; emails to Brad Dixon re the same
12/28/2013	BJD	3.3	\$1,188.00	Review and analyze correspondence from co-counsel re conversation with sheriff office and execution issues; research re execution on personal property
1/2/2014	BJD	0.4	\$150.00	Attend to issues regarding recovery of property, rental rate and royalty amounts
1/2/2014	KHK	0.7	\$157.50	Emails to Brad Dixon re client approval of rental payment on January 6th; update proposed order with January 6th deadline; email to Brent Robinson for approval
1/6/2014	KHK	1	\$225.00	Prepare for hearing on writ of assistance; emails to Brent Robinson and Brad Dixon re the same; discuss execution issues generally with Brad Dixon
1/6/2014	BJD	2.9	\$1,087.50	Review and analyze correspondence from opposing counsel re status of hearing on request for possession of property; conference call with co-counsel re same; conference call with client re possession of property and payment of royalty without rental of commercial space; review statute re use of property without paying rent, i.e. paying a royalty for removal of aggregate only
1/7/2014	KHK	0.4	\$90.00	Draft amended order for writ of assistance; email to Brad Dixon re the same; review email from Gayle Albertson re aggregate report
1/8/2014	KHK	0.1	\$22.50	Emails from and to Gayle Albertson re order on writ of assistance
1/9/2014	KHK	0.5	\$112.50	Discuss payment of aggregate with Brad Dixon; emails to/from Brad Dixon, Brent Robinson and Gayle Albertson re amended order on writ of assistance

1/13/2014	KHK	0.3	\$67.50	Draft fax to judge to attach to proposed order on writ of assistance; discuss with Brad Dixon and assistant re the same
1/15/2014	BJD	1.1	\$412.50	Review and analyze objection to order; correspond with opposing counsel re asbence of reasons set forth in objection to order; analyze issues re resetting of posession hearing
1/18/2014	KHK	0.5	\$112.50	Review voicemail and email correspondence from Brent Robinson re writ of assistance; email to Brad Dixon re the same
1/19/2014	BJD	0.3	\$112.50	Review and analyze correspondence from client; draft and revise response to same; review statutes re possession of property
1/21/2014	KHK	0.5	\$112.50	Discuss and strategize with Brad Dixon re rental of foreclosed property and sheriff's sale
1/22/2014	KHK	0.3	\$67.50	Research Ritchie Brothers contact for Twin Falls area; voicemail to contact re need of help for auction for vehicles and equipment
1/22/2014	BJD	1.1	\$412.50	Communicate with opposing counsel re status of property possession; review case law re royalty issues
1/23/2014	KHK	1.9	\$427.50	Draft request for expedited hearing on motion for writ of assistance; phone calls with Ritchie Brothers re auction of equipment; emails to Ritchie Brothers re the same
1/23/2014	BJD	2.3	\$862.50	Attend to issues re possession of property; conference with client re same; analyze issues re motion for expedited hearing
1/24/2014	KHK	1.3	\$292.50	Edit and finalize request for expedited hearing on motion for writ of assistance; email to Brad Dixon re the same; call with Joe LaBresh of Ritchie Brothers re equipment sale and removal of Gordon Paving from foreclosed property; email to Brad Dixon re the same
1/27/2014	KHK	0.8	\$180.00	E-mail to Brad Dixon re request for expedited hearing on writ of assistance; edit, finalize, and file request for expedited hearing on motion for writ of assistance
1/28/2014	BJD	0.2	\$75.00	Correspond with client re status of possession hearing
1/29/2014	KHK	0.1	\$22.50	Discuss with Brad Dixon assignment of rights to Northwest Sand and Gravel Acquisition
2/3/2014	BJD	2.8	\$1,050.00	Draft and revise letter of intent between Kilgore and AgStar; analyze issues re assignment of certificate of sale to acquisition company; research assignment and disposition of certificate of sale during redemption period
2/4/2014	BJD	0.4	\$150.00	Finalize assignment and forward same to client
2/4/2014	KHK	1.3	\$292.50	Draft assignment of rights to real property to Northwest Sand and Gravel Acquisition; email same to Brad Dixon with questions; emails to Brad Dixon to prepare for Friday's hearing on motion for writ of assistance

2/6/2014	KHK	0.6	\$135.00	Voice mail from Brent Robinson's office re Gordon Paving hearing on motion for writ of assistance; email to Brad Dixon re the same; call with Reed Cotten at Brent Robinson's office re royalties, rent, and back rent issues; email to Brad Dixon re the same; emails with Reed Cotten re the same
2/6/2014	BJD	3.9	\$1,462.50	Travel to an meet with client re possession issues on foreclosed property and collection on deficiency
2/7/2014	KHK	1.8	\$405.00	Hearing on motion for writ of assistance; emails from Reed Cotten re agreement on possession; discussion with Brad Dixon re the same; draft order on motion; email to Ritchie Brothers re begin process of equipment auction; email Reed Cotten for approval of order; phone call with Joe LaBresh of Ritchie Brothers re equipment auction re access and list of equipment
2/7/2014	BJD	2.3	\$862.50	Prepare for and appear for hearing re motion for possession; conference with client re same; conference with client re discussion with opposing parties
2/10/2014	BJD	0.2	\$75.00	Finalize letter to Tippman
2/11/2014	KHK	2	\$450.00	Emails to assistant and Brad Dixon re the same; finalize summons and complaint against Idaho Asphalt and email to assistant for filing; call with Brad Dixon re assignment and order on motion for writ of assistance; revise and submit new order on motion for writ of assistance to court to reflect assignment of rights; revise letter to Tippmann Construction re execution on accounts receivable; emails to Brad Dixon re the same
2/12/2014	KHK	0.4	\$90.00	Emails with Brent Robinson re proposed order on motion for writ of assistance; review and sign complaint against Idaho Asphalt, Inc.; review objection filed by Brent Robinson to proposed order
2/12/2014	BJD	1.7	\$637.50	Review and analyze motion re writ of possession served by defendants and determine proper course of action
2/13/2014	KHK	0.7	\$157.50	Calls with Ritchie Brothers re entry on to property and inventory; email to Brad Dixon re the same
2/18/2014	BJD	1.2	\$450.00	Review and analyze correspondence from Ritchie Bros; review statute re titling of foreclosed equipment; conference with co-counsel re same' communicate with client re Ritchie Bros
2/19/2014	BJD	0.2	\$75.00	Analyze issues re Chobani dollars
2/19/2014	KHK	2	\$450.00	Discuss execution issues with Brad Dixon; finalize letter to Tippman Construction re execution on accounts receivable; email to Ritchie Brothers re access to the Gordon Paving property and related issues; voice mail to Leslie Iverson re access to property; call with Leslie Iverson re access to property and related issues; voice mail to private investigator re asset searches; review Brent Robinson's motion to amend order on writ of assistance

2/20/2014	KHK	0.4	\$90.00	Review correspondence from Leslie Iverson re Ritchie Brothers and location of titles; email to Brad Dixon re the same
2/20/2014	BJD	2.2	\$825.00	Draft and revise correspondence to opposing counsel; review and analyze correspondence from opposing counsel; review equipment list; finalize letter to Tippman; analyze issues re turnover of titles
2/24/2014	KHK	0.9	\$202.50	Discuss issue of getting titles back with Brad Dixon as well as asset search; message to attorney Kelly McConnell (Wells Fargo) regarding titles; email to Joe LeBresh at Ritchie Brothers re status of entering property to complete inventory; research re motion for return of titles
2/24/2014	BJD	4.3	\$1,612.50	Analyze issues re asset recovery, collectability of judgment and draft memorandum re same
2/25/2014	BJD	1.2	\$450.00	Correspond with opposing counsel re collection of titles and redemption rights; review and analyze issues re motion for turnover of titles
2/25/2014	KHK	3.3	\$742.50	Complete research and draft motion for transfer of vehicle titles;
2/25/2014	BJD	2.1	\$787.50	Analyze issues re Ritchie Bros auction, inventory and collection of equipment; review statute re collection of titles
2/26/2014	KHK	0.6	\$135.00	Phone call with Tippmann Construction Project Accountant Zach Land re money owed to Gordon Paving; email to Brad Dixon re the same; review and submit motion for transfer of vehicle titles
3/4/2014	KHK	0.2	\$45.00	Email to co-counsel re execution on small items of equipment; call to investigator re status of asset searches; email to co-counsel re the same
3/6/2014	BJD	0.6	\$225.00	Review and analyze original vehicle titles and strategize with co-counsel re discussion with Ritchie Bros.; review correspondence from opposing counsel; forward same to client; compare titles to list of remaining equipment
3/17/2014	BJD	2.2	\$825.00	Analyze issues re defendant asset report; strategy conference with client re same; research re deficiency elements of proof
3/20/2014	BJD	2.1	\$787.50	Draft and revise strategy memorandum and fee estimate to client; research collection process for trust
3/26/2014	BJD	5.1	\$1,912.50	Draft and revise assignment of redemption rights; research re assignment and sale of redemption rights; draft and revise royalty agreement; review and analyze foreclosure state re dismissal of lawsuit post decree of foreclosure
3/27/2014	BJD	0.3	\$112.50	Revise assignment agreement and send same to client with explanation of notary requirement

4/1/2014	BJD	2.2	\$825.00	Attend to issues re personal property taxes; conference with client re personal property taxes and ritchie bros auction; research re personal property taxes; finalize documents re assignment of redemption rights and forward same to opposing counsel
4/3/2014	BJD	1.1	\$412.50	Review and revise assignment agreement based on USDA comments
4/7/2014	KHK	0.2	\$45.00	Review and submit response to motion to amend order on writ of assistance; email to co-counsel re remaining vehicle titles to prepare items for equipment auction
4/8/2014	BJD	1.7	\$637.50	Draft and revise changes to assignment agreement and correspond with client re same; research guaranty agreements
4/9/2014	KHK	0.5	\$112.50	Discuss remaining issues related to auction of equipment with co-counsel; review Defendants' reply in support of motion for reconsideration of order on writ of assistance; email to co-counsel re the same
4/9/2014	BJD	2.1	\$787.50	Review and analyze USDA changes to assignment agreement; draft and revise changes re same; conference with client re USDA changes; research real party in interest rule re release; research re USDA deficiency actions
4/10/2014	BJD	2.7	\$1,012.50	Analyze motion to amend judgment re possession of property; research re same; conference co-counsel re response
4/11/2014	KHK	0.1	\$22.50	Email to auctioneer Joe LeBresh re next steps for equipment auction
4/14/2014	KHK	1.3	\$292.50	Prepare and argue hearing on motion for reconsideration of order on writ of assistance; respond to email from Joe LeBresh and Ritchie Brothers re status of auction
4/15/2014	KHK	0.7	\$157.50	Calls with Joe LeBresh of Ritchie Brothers re status of auction; discuss same with co-counsel
4/15/2014	BJD	2.5	\$937.50	Communicate with client re status of depositions; correspond with T. Dixon of the USDA; review documents re guaranty agreements; communicate with client re problems with Ritchie Bros.; communicate with opposing counsel re finalized assignment agreement
5/8/2014	KHK	0.4	\$90.00	Strategize with co-counsel re upcoming hearing re motion for reconsideration on writ of assistance
5/12/2014	BJD	0.5	\$187.50	Court hearing re motion to reconsider
5/13/2014	BJD	0.2	\$75.00	Respond to inquiry from client re removal of aggregate from commercial property
5/14/2014	BJD	8.7	\$3,262.50	Review and analyze inventory list; begin preparations for evidentiary hearing re royalties
5/15/2014	KHK	1.1	\$247.50	Voicemail from sheriff's office re personal property taxes; correspond with co-counsel re same; research re obtaining vehicle titles for equipment missing titles

5/16/2014	BJD	6.6	\$2,475.00	Conference call with Sheriff re personal property taxes; research re same; conference with client re personal property taxes; prepare for evidentiary hearings
5/19/2014	BJD	0.4	\$150.00	Strategy call with client
5/21/2014	BJD	2.9	\$1,087.50	Review and analyze pretrial obligations; draft and revise expert witness disclosure; review statute re evidentiary obligations
5/26/2014	BJD	9.7	\$3,637.50	Review and analyze Stanger appraisal, Kinipe appraisal, Klundt appraisal and old Stager appraisal; review and analyze discovery responses; prepare for evidentiary hearing
5/27/2014	BJD	9.9	\$3,712.50	Prepare for evidentiary hearing re royalties and possession of property; finalize review of appraisals; review and analyze deposition transcript of B. Hansen
5/28/2014	RRH	1.9	\$646.00	Discussion with Brad Dixon re lease rent and royalty issues; review the witness outline information and prepare for the Northwest Sand and Gravel hearing
5/28/2014	BJD	8.7	\$3,262.50	Prepare for evidentiary hearing re royalties and possession of property; conference call with B. Stanger re hearing preparation
5/29/2014	RRH	0.4	\$136.00	Prepare for mineral royalty and lease information for Northwest Sand & Gravel hearing
5/29/2014	BJD	8.8	\$3,300.00	Travel to and meet with client re case strategy; tour commercial property and document personal property for tax issues
7/8/2014	BJD	0.7	\$262.50	Review and analyze status of obtaining titles on vehicles; conference with co counsel re same
7/10/2014	BJD	1.6	\$600.00	Draft and revise correspondence to client; analyze issues re Idaho Asphalt, Chobani and vehicle titles
7/17/2014	BJD	4.2	\$1,575.00	Attend to issues re titles based on client inquiry and suggestion; analyze trial transcript; research re admissibility of geological expert testimony; conference with B. Stanger
8/6/2014	BJD	0.3	\$112.50	Draft letter to John Deere credit services re lien status; review lien status and correspond with client re same
8/25/2014	BJD	2.1	\$787.50	Review and analyze documentation re amounts paid to Defendants from Chobani project; draft and revise e-mail to client re same; conference call with CFO for Tippman Construction
8/26/2014	BJD	0.9	\$337.50	Draft and revise correspondence to opposing counsel re Chobani conversion
8/27/2014	BJD	0.3	\$112.50	Correspond with Z. Land re Tippman Construction payments; finalize memo to client re Chobani payments; review documents previously provided in discovery; analyze issues re notice of conversion

8/28/2014	BJD	3.6	\$1,350.00	Attend to issues re bill of sale; attend to vehicle title issues; review and analyze issues re Idaho Asphalt and Chobani funds; research re deficiency impact on equipment sale
9/2/2014	BJD	4.1	\$1,537.50	Analyze issues re sums from Chobani/Tipman Construction and respond to client re same; review and analyze issues re memorandum decision from court on motion for entry of deficiency judgment; research re same; conference with client re memorandum decision; draft and revise e-mail to client with full description of memorandum decision and recommendation for next steps
9/3/2014	BJD	2.1	\$787.50	Conference call with client re status of case; review and analyze proposed bill of sale; review and analyze comfort order motion and authority to hold article 9 sale
9/4/2014	BJD	4.1	\$1,537.50	Revise proposed bill of sale consistent with auction company input and client input; review and analyze memorandum decision for recommendation to client re motion to reconsider; outline motion to reconsider; research re same
9/15/2014	BJD	0.2	\$75.00	Review and analyze memorandum in opposition to approval of Article 9 sale
9/17/2014	BJD	2.9	\$1,087.50	Review and analyze reply memorandum in support of article 9 sale; review case law re same; prepare for hearing re ability to foreclose on personal property
9/18/2014	BJD	2.1	\$787.50	Prepare for and attend motion re comfort order on article 9 sale; communicate with client re same; review and analyze proposed order
9/18/2014	BJD	5.3	\$1,987.50	Correspond with opposing counsel re removal of aggregate consistent with stipulation; attend to sale notice issues; review notice and analyze issues re potential lien holders; analyze issues re potential for usage of actual sale data at motion to reconsider or appeal
9/22/2014	BJD	0.3	\$112.50	Review and analyze notice letters
9/23/2014	BJD	2.1	\$787.50	Attend to issues re titles and Article 9 sale; review and analyze correspondence from opposing counsel and B. Hansen re aggregate removal
9/24/2014	BJD	2.2	\$825.00	Review and revise motion to disallow requested fees; respond to inquiries re titles for Article 9 sale; correspond with client re receipt of funds for removal of aggregate
9/25/2014	BJD	3.6	\$1,350.00	Review and analyze issues re titles received from the DMV; draft and revise sheriff deed; analyze issues re single purpose entity for redemption expiration; research statute re fees for collection
9/29/2014	BJD	1.7	\$637.50	Analyze issues re article 9 sale in preparation for client strategy discussion; conference with client re same; review titling issues for dissolved related entity not subject to judgment;

10/1/2014	BJD	2.7	\$1,012.50	Review and analyze correspondence from Cincinnati Insurance re claim to equipment; research re same; analyze UCC statements; draft and revise letter to client re lien claim
10/3/2014	BJD	0.2	\$75.00	Obtain update from co-counsel re asset sale; evaluate issues re additional collateral for collection
10/6/2014	BJD	0.2	\$75.00	Analyze issues re potential concern with documentation of UCC 9 sale
10/9/2014	BJD	0.6	\$225.00	Review correspondence to opposing counsel re Deere titles; conference with client re status of equipment seizure and missing equipment
10/20/2014	BJD	1.1	\$412.50	Review and analyze issues re title spreadsheets provided by ITD; research re collection on undisclosed vehicles; strategy discussion with co-counsel re same; communicate with client re ITD titles.
10/21/2014	BJD	0.2	\$75.00	Analyze issue re titles and John Deere strategy
11/3/2014	JDF	1.5	\$240.00	Prepare documents for hearings on Motion to Amend Findings, Motion to Disallow and Motion to Transfer Title
TOTAL FEES:				
			\$135,282.50	

Exhibit D

AGSTAR FINANCIAL v. NORTHWEST SAND AND GRAVEL
Fifth Judicial District Court - No. CV-2013-2731
Exhibit D - COSTS
AFFIDAVIT OF BRADLEY J. DIXON

Discretionary Costs

Date	Cost	Description
6/17/2013	\$ 5.40	Document Reproduction
6/27/2013	\$ 9.74	UPS Air Courier Delivery
6/27/2013	\$ 2.00	Filing and Misc. Fees - - Vendor: TWIN FALLS COUNTY DISTRICT COURT 6/27/13 Issue Writ of Execution/BJD 304866
6/29/2013	\$ 12.00	UPS Air Courier Delivery
7/2/2013	\$ 416.36	Airfare - Jul 10, 2013 Alaska Airlines, SEA-BOI-SEA, Erin L. Eliassen, Client Meeting / exe3542
7/10/2013	\$ 195.00	Service Fees - - Vendor: TRI COUNTY PROCESS SERVING BOISE 06/28/13 Service of subpoena upon Tippman Construction/BJD
7/10/2013	\$ 175.00	Service Fees - - Vendor: TRI COUNTY PROCESS SERVING BOISE 06/27/13 Service of subpoena upon City of Twin Falls/BJD
7/10/2013	\$ 170.00	Service Fees - - Vendor: TRI COUNTY PROCESS SERVING BOISE 06/28/13 Service of subpoena upon Granite Excavation, Inc./BJD
7/10/2013	\$ 144.00	Service Fees - - Vendor: TRI COUNTY PROCESS SERVING BOISE 06/27/13 Service of subpoena upon Magic Valley Equipment/BJD
7/10/2013	\$ 195.00	Service Fees - - Vendor: TRI COUNTY PROCESS SERVING BOISE 06/27/13 Service of subpoena upon Warner Truck Center/BJD
7/10/2013	\$ 220.00	Service Fees - - Vendor: TRI COUNTY PROCESS SERVING BOISE 06/28/13 Service of subpoena upon Swaggart Brothers/BJD
7/10/2013	\$ 94.00	Service Fees - - Vendor: TRI COUNTY PROCESS SERVING BOISE 06/27/13 Service of subpoena upon RSCI/BJD
7/10/2013	\$ 175.00	Service Fees - - Vendor: TRI COUNTY PROCESS SERVING BOISE 06/28/13 Service of subpoena upon Gateway Building Systems, Inc./BJD
7/10/2013	\$ 85.00	Service Fees - - Vendor: TRI COUNTY PROCESS SERVING BOISE 06/27/13 Service of subpoena upon McAlvain Construction, Inc./BJD
7/10/2013	\$ 20.00	Taxi & Other Transportation - Jul 10, 2013 Quick Cab, Client Meeting / exe3542
7/11/2013	\$ 31.00	Parking - Jul 11, 2013 PORT OF SEATTLE, Client Meeting / exe3542
7/11/2013	\$ 14.00	Taxi - - Vendor: BOISE CITY TAXI INC 07/11/2013, EXE
7/23/2013	\$ 1.82	Conference Calls EXE
8/26/2013	\$ 25.52	Computerized Research - Westlaw KENNEDY, KERSTI
8/27/2013	\$ 13.50	Computerized Research - Lexis KENNEDY, KERSTI
8/27/2013	\$ 60.12	Computerized Research - Westlaw KENNEDY, KERSTI
9/7/2013	\$ 139.50	Computerized Research - Westlaw KENNEDY, KERSTI
9/9/2013	\$ 515.06	Computerized Research - Westlaw KENNEDY, KERSTI
9/24/2013	\$ 31.68	Document Reproduction
9/25/2013	\$ 800.00	Publication Costs - - Vendor: TWIN FALLS COUNTY SHERIFF'S OFFICE 9/25/13 Fee for publishing and posting the Notice of Sale in the Idaho Statesman/BJD

9/25/2013	\$ 97.00	Filing and Misc. Fees - - Vendor: TWIN FALLS COUNTY RECORDER 9/25/13 Fee to Record Notices Levy, Sale and Order of Sale/BJD 304906
9/30/2013	\$ 7.92	UPS Air Courier Delivery
10/1/2013	\$ 10.56	Document Reproduction
10/7/2013	\$ 10.48	UPS Air Courier Delivery
10/9/2013	\$ 500.00	Publication Costs - - Vendor: TWIN FALLS COUNTY SHERIFF'S OFFICE 10/09/13 Additional sums to post Notice of Sale/BJD
10/9/2013	\$ 19.00	Special Copy - - Vendor: COURT SERVICES 10/9/13 Copy and Certified Order of Sale and Judgment and Decree/BJD 304909
10/21/2013	\$ 1,417.00	Publication Costs - - Vendor: TWIN FALLS COUNTY SHERIFF'S OFFICE 10/21/13 Publish Notice of Sale in the Times News/BJD
10/22/2013	\$ 7.96	UPS Air Courier Delivery
11/6/2013	\$ 9.72	Document Reproduction
11/8/2013	\$ 8.66	UPS Air Courier Delivery
11/8/2013	\$ 0.36	Document Reproduction
11/14/2013	\$ 9.00	Document Reproduction
11/14/2013	\$ 153.00	Filing and Misc. Fees - - Vendor: TWIN FALLS COUNTY RECORDER 11/14/13 Rerecord Three Documents/BJD 304933
11/20/2013	\$ 6.60	Document Reproduction
11/21/2013	\$ 0.24	Document Reproduction
11/22/2013	\$ 100.00	Filing and Misc. Fees - - Vendor: SECRETARY OF STATE 11/22/13 Certificate of Organization/BJD 304934
2/11/2014	\$ 96.00	Filing and Misc. Fees - - Vendor: TWIN FALLS COUNTY DISTRICT COURT 2/11/14 Fee to File a Complaint/BJD 304962
4/29/2014	\$ 6.00	Special Copy - - Vendor: TWIN FALLS COUNTY DISTRICT COURT 4/29/14 CD of February 7, 2014 Hearing/BJD 304997
5/1/2014	\$ 118.48	Computerized Research - Westlaw KENNEDY, KERSTI
5/12/2014	\$ 35.75	Court Reporter Services - - Vendor: TRACY E BARKSDALE, CSR 999 2/7/14 Official transcript of February hearing/BJD
5/13/2014	\$ 43.32	Document Reproduction
5/20/2014	\$ 91.00	Special Copy - - Vendor: ADA COUNTY ASSESSOR 5/20/14 Idaho Motor Vehicle Records Request/KHK 635937
5/27/2014	\$ 300.36	Document Reproduction
5/27/2014	\$ 55.44	Document Reproduction
5/28/2014	\$ 3.13	Special Copy - - Vendor: STOEL RIVES LLP PETTY CASH 5/2/14 Public records request from Ada County Assessor/KHK
5/28/2014	\$ 127.32	Document Reproduction
5/28/2014	\$ 5.52	Document Reproduction
6/4/2014	\$ 392.40	Court Reporter Services - - Vendor: TUCKER & ASSOCIATES LLC 5/13/14 Deposition of Brian Hansen/BJD
7/16/2014	\$ 32.50	Special Copy -- Vendor: TWIN FALLS COUNTY DISTRICT COURT Five certified copies of the Judgment and Decree of Foreclosures /BJD
7/29/2014	\$ 52.00	Special Copy -- Vendor: TWIN FALLS COUNTY DISTRICT COURT Make 8 certified copies of the Judgment and Decree of Foreclosure /JDF
8/4/2014	\$ 17.16	Document Reproduction
8/4/2014	\$ 187.68	Document Reproduction
8/5/2014	\$ 7.80	Document Reproduction
8/5/2014	\$ 0.60	Document Reproduction
8/5/2014	\$ 184.80	Auto Mileage: 330 miles - Aug 05, 2014 Deposition / khk4634

8/5/2014	\$ 146.40	Court Reporter Services -- Vendor: TUCKER & ASSOCIATES LLC 8/5/14 Deposition transcript of John Cox /BJD
8/5/2014	\$ 543.11	Court Reporter Services -- Vendor: TUCKER & ASSOCIATES LLC 8/5/14 Deposition transcript of Deven Elison /BJD
8/8/2014	\$ 249.65	Court Reporter Services -- Vendor: TUCKER & ASSOCIATES LLC Deposition transcript of Chris A. Park, P.E. /BJD
8/11/2014	\$ 2.40	Document Reproduction
8/11/2014	\$ 11.16	Document Reproduction
8/12/2014	\$ 230.34	Court Reporter Services -- Vendor: TUCKER & ASSOCIATES LLC Deposition transcript of Dave Coats /BJD
8/12/2014	\$ 47.52	Document Reproduction
8/12/2014	\$ 26.40	Document Reproduction
8/22/2014	\$ 8.22	UPS Air Courier Delivery
8/22/2014	\$ 3.12	Document Reproduction
8/27/2014	\$ 1.30	Litigation Technology Services & e-Discovery Data Management
9/8/2014	\$ 1.44	Document Reproduction
9/10/2014	\$ 900.00	Court Reporter Services -- Vendor: VIRGINIA M BAILEY RPR CSR Court transcription /JDF
9/11/2014	\$ 8.18	UPS Air Courier Delivery
9/22/2014	\$ 0.96	Document Reproduction
9/23/2014	\$ 9.24	Document Reproduction
9/23/2014	\$ 11.95	UPS Air Courier Delivery
9/24/2014	\$ 1.08	Document Reproduction
9/24/2014	\$ 10.72	UPS Air Courier Delivery
9/25/2014	\$ 0.60	Document Reproduction
9/29/2014	\$ 0.36	Document Reproduction
9/30/2014	\$ 4.00	Special Copy -- Vendor: TWIN FALLS COUNTY DISTRICT COURT Copy of new Complaint filed in Twin Falls /KHK
10/13/2014	\$ 47.40	Document Reproduction
10/13/2014	\$ 15.84	UPS Air Courier Delivery
10/30/2014	\$ 10.00	Litigation Technology Services & e-Discovery Data Management
11/3/2014	\$ 14.52	Document Reproduction
11/5/2014	\$ 28.56	Document Reproduction
TOTAL COSTS:		\$9,999.93

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
DISTRICT COURT

TWIN FALLS CO. IDAHO
FILED SHERIFF# 20144946
COURT CASE# CV12-2731
2014 NOV 24 PM 2:03

PLAINTIFF: AGSTAR FINANCIAL SERVICES ACA
VS
DEFENDANT: NORTHWEST SAND & GRAVEL INC.

BY _____ CLERK
DEPUTY

SHERIFF'S OFFICE,
COUNTY OF TWIN FALLS,
STATE OF IDAHO.

ss. SHERIFF'S RETURN ON A CONTINUOUS
WRIT OF EXECUTION

I, SHERIFF TOM CARTER, Sheriff of the County of Twin Falls, State of
Idaho, hereby certify that I received the attached writ of EXECUTION
on the 21 day of NOVEMBER, 2014; that by virtue thereof I served
upon TKT EXCAVATION & TRUCKING
a copy of the said writ and a notice that all debts and credits owing to
the defendant... by such person are attached in pursuance of such writ
on the 21 day of NOVEMBER, 2014, in TWIN FALLS COUNTY, IDAHO.
That from the said TKT EXCAVATION & TRUCKING
I Received \$ 25,392.17.

From this Amount \$.00 was returned to the Defendant,
\$ 25,392.17 was withheld, from which
- \$ 75.00 Sheriff's fees were deducted,
LEAVING \$ 25,317.17 which I am submitting to the
Plaintiff to be applied on the
Judgement as final payment.

The original documents have been returned to the Clerk of the Court.
For which I give Receipt and which I hold subject to Court Order.

Dated this 21 day of NOVEMBER, 2014

By Julie Munn
Julie Munn, Deputy for
SHERIFF TOM CARTER
Sheriff of Twin Falls County
208-736-4064

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED
RECEIVED

2014 NOV 21 PM 2:03
2014 NOV 21 PM 2:23

BY
TWIN FALLS COUNTY SHERIFF
CLERK
DEPUTY

Brent T. Robinson, Esq.
ROBINSON & TRIBE
Attorneys at Law
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 1932
btr@idlawfirm.com

Attorneys for defendants
Northwest Sand & Gravel, Inc.,
Gordon Paving Company, Inc., and
Blackrock Land Holdings, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,)
)
Plaintiff,)
)
vs.)
)
NORTHWEST SAND & GRAVEL, INC., an)
Idaho corporation; GORDON PAVING)
COMPANY, INC., an Idaho corporation;)
BLACKROCK LAND HOLDINGS, LLC, an)
Idaho limited liability company; TOWN AND)
COUNTRY BANK, INC.; and FIRE SERVICE)
OF IDAHO, INC.)
)
Defendants)

Case No. CV-12-2731

EXECUTION

THE PEOPLE OF THE STATE OF IDAHO

TO: THE SHERIFF OF THE COUNTY OF TWIN FALLS COUNTY, IDAHO GREETING:

WHEREAS, on the 18th day of November, 2014, defendants Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc., and Blackrock Land Holdings, LLC, ("Gordon Paving") recovered a Judgment in the said District Court of the County of Twin Falls against plaintiff AgStar Financial Services, ACA, for costs in the sum of Two Thousand Nine Hundred Eleven and 16/100 Dollars (\$2,911.16), discretionary costs in the sum of Eight Hundred Fifty-four and 01/100 Dollars (\$854.01), and attorney's fees in the sum of Twenty-one Thousand Five Hundred Twelve Dollars (\$21,512), for a total of costs and fees of Twenty-five Thousand Two Hundred Seventy-seven and 17/100 Dollars (\$25,277.17), said judgment to bear interest at the highest legal rate until satisfied.

AND WHEREAS, the Judgment Roll in the action in which said Judgment was entered, is filed in the Clerk's office of said Court in the County of Twin Falls and the said Judgment was docketed in said Clerk's office, in the said County on the day and year first above written. And the sum of Twenty-five Thousand Two Hundred Seventy-seven and 17/100 Dollars (\$25,277.17) with interest from November 18, 2014, is now, at the date of this writ, actually due on said Judgment.

NOW, you, the said Sheriff, are hereby required to satisfy said Judgment, with interest as aforesaid, and costs and accruing costs, out of the personal property of said plaintiff, judgment debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to said debtor on the day when said Judgment was docketed in Twin Falls County, or at any time thereafter, and make return of this writ within sixty (60) days after the receipt hereof, with what you have done endorsed thereon.

WITNESS Honorable Randy J. Stoker, District Judge of the said Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, this 21 day of Nov, 2014.

ATTEST my hand and the seal of said Court, the day and year last above written.

CLERK OF THE COURT

By: bbamyan
Deputy Clerk

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 NOV 26 AM 11:39

BY _____
CLERK

PS _____
DEPUTY

Bradley J. Dixon, ISB No. 6167
Email: bjdixon@stoel.com
Kersti H. Kennedy, ISB No. 9064
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STOEL RIVES LLP
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Appellant-Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Respondents-Defendants.

Case No. CV 12-2731

NOTICE OF APPEAL

TO: The above named Respondents-Defendants and their attorney of record, Brent T. Robinson and Reed Cotten, Robinson & Tribe, P.O. Box 396, Rupert, ID 83350, and the Clerk of the above entitled court.

NOTICE IS HEREBY GIVEN THAT:

1. Appellant-Plaintiff, AgStar Financial Services, ACA ("Appellant") appeals to the Idaho Supreme Court from the District Court of the Fifth Judicial District of the State of Idaho,

in and for Twin Falls County, and against Respondents-Defendants (“Respondents”).

2. Appellant hereby appeals as a matter of right pursuant to I.A.R. 11(a)(1) from the Judgment for Award of Attorney’s Fees and Costs entered on November 18, 2014 by the Honorable Randy J. Stoker.

3. Without waiving its right to assert other issues on appeal, Appellant states the issues it intends to assert on appeal include: whether the District Court legally erred when it 1) held that the parties’ contract provision did not place the burden of all attorneys’ fees and costs, including the Respondents’ own, on the Respondents; 2) found that Respondents were prevailing parties under §12-120(3), despite losing in the foreclosure case-in-chief and throughout the post-foreclosure process; and 3) held that I.C. § 12-120(5) did not apply, although a judgment and decree of foreclosure had been entered and the mortgaged property sold.

4. Appellant requests the preparation of the reporter’s transcript in electronic format of the hearing before Judge Stoker, held on November 10, 2014 at 1:30PM, regarding Plaintiff’s Motion to Disallow Defendants’ Request for Attorney’s Fees and Costs. The court reporter was Tracy Barksdale.

5. Appellant requests the following documents to be included in the clerk’s record in electronic format in addition to those automatically included under I.A.R. 28:

- a. Order on Prepayment Penalty, filed June 19, 2013
- b. Order of Sale, filed July 3, 2013
- c. Order Granting Memorandum of Costs and Fees, filed September 30, 2013
- d. Certificate of Sale, filed December 3, 2013
- e. Order on Motion for Writ of Assistance, filed January 3, 2014
- f. Second Amended Order on Motion for Writ of Assistance, filed February 13, 2014

- g. Order re Possession of Property, filed April 14, 2014
- h. Order Resolving Royalties Issue, filed June 25, 2014
- i. Defendants' Motion for Award of Attorney's Fees and Costs, filed September 11, 2014
- j. Defendants' Memorandum in Support of Motion for Award of Attorney's Fees and Costs, filed September 11, 2014
- k. Affidavit of Counsel in Support of Defendants' Motion for Award of Attorney Fees and Costs with Exhibit A, filed September 11, 2014
- l. Order Approving Personal Property Collateral Auction, filed September 19, 2014
- m. Motion to Disallow Defendants' Request for Attorney's Fees and Costs, filed September 24, 2014
- n. Memorandum in Support of Plaintiff's Motion to Disallow Defendants' Request for Attorney's Fees and Costs, filed September 24, 2014
- o. Defendants' Rebuttal Memorandum in Support of its Motion for Award of Attorney Fees and Costs, filed October 31, 2014
- p. Reply in Support of Motion to Disallow Fees and Costs, filed November 6, 2014
- q. Order Re Vehicle Title with John Deere Lien, filed November 13, 2014

6. I hereby certify that:

- a. a copy of this notice of appeal has been served on the court reporter of whom the transcript of the November 10, 2014 hearing has been requested as named below at the address set out below: Attn: Tracy Barksdale, 590 Parkwood Drive, Twin Falls, Idaho, 83301;
- b. Tracy Barksdale has been paid the estimated fee of \$75.00 for the preparation of the court reporter's transcript of the November 10, 2014 hearing, consisting of approximately 25 pages;
- c. the estimated fee for preparation of the clerk's record has been paid;

- d. the appellate filing fee has been paid; and
- e. service of this notice has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED: November 25, 2014.

STOEL RIVES LLP

Kersti H. Kennedy

Bradley J. Dixon
Kersti H. Kennedy
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of November, 2014, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** in the above-entitled matter as follows:

<p>Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com</p> <p><i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i></p>	<p><input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email</p>
<p>Court Reporter:</p> <p>Tracy Barksdale 425 Shoshone Street North Twin Falls, Idaho 83303</p>	<p><i>via US mail</i></p>

By: *Kersti H. Kennedy*
Kersti H. Kennedy

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
DISTRICT COURT

DISTRICT COURT
TWIN FALLS, IDAHO
SHERIFF'S OFFICE
COURT CASE# 2014-2731

PLAINTIFF: AGSTAR FINANCIAL SERVICES
VS
DEFENDANT: NORTHWEST SAND & GRAVEL INC.

* Amended

2014 NOV 28 AM 11:06

SHERIFF'S OFFICE,
COUNTY OF TWIN FALLS,
STATE OF IDAHO.

ss.

SHERIFF'S RETURN ON A CONTINUOUS
WRIT OF EXECUTION

CLERK

I, SHERIFF TOM CARTER, Sheriff of the County of Twin Falls, State of
Idaho, hereby certify that I received the attached writ of EXECUTION
on the 21 day of NOVEMBER, 2014; that by virtue thereof I served
upon TKT EXCAVATION & TRUCKING

a copy of the said writ and a notice that all debts and credits owing to
the defendant... by such person are attached in pursuance of such writ
on the 21 day of NOVEMBER, 2014, in TWIN FALLS COUNTY, IDAHO.

That from the said TKT EXCAVATION & TRUCKING

I Received \$.00.

From this Amount \$.00 was returned to the Defendant,

\$.00 was withheld, from which

- \$.00 Sheriff's fees were deducted,

LEAVING \$.00 which I am submitting to the
Plaintiff to be applied on the
Judgement.

The original documents have been returned to the Clerk of the Court.

For which I give Receipt and which I hold subject to Court Order.

* The original return was made in error. The claim of exemption
period had not been completed. The monies are still being held.

Dated this 28 day of NOVEMBER, 2014

By Julie Munn
Julie Munn, Deputy for
SHERIFF TOM CARTER
Sheriff of Twin Falls County
208-736-4064

132
Brent T. Robinson, Esq.
ROBINSON & TRIBE
Attorneys at Law
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 1932
btr@idlawfirm.com

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 DEC -5 PM 4:39

BY _____
CLERK
DEPUTY

Attorneys for defendants
Northwest Sand & Gravel, Inc.,
Gordon Paving Company, Inc., and
Blackrock Land Holdings, LLC

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

AGSTAR FINANCIAL SERVICES, ACA,

Case No. CV-12-2731

Plaintiff,

vs.

NORTHWEST SAND & GRAVEL, INC., an
Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho corporation;
BLACKROCK LAND HOLDINGS, LLC, an
Idaho limited liability company; TOWN AND
COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.

**DEFENDANTS' OBJECTION TO
PLAINTIFF'S PETITION FOR POST
JUDGMENT FEES AND COSTS**

Defendants

COME NOW the Defendants, by and through their attorney of record, Brent T. Robinson of the firm Robinson & Tribe, and objects to the reasonableness of the attorney's fees and costs that have been incurred in this matter as follows.

I. Plaintiff's Petition is Untimely

Plaintiff for the first time seeks to add post judgment attorney's fees and costs to

DEFENDANT'S OBJECTION TO REASONABLENESS OF FEES AND COSTS INCURRED BY PLAINTIFF - 1

the judgment this Court entered on June 19, 2013. This is over eight months after it filed its motion seeking a deficiency judgment. If Plaintiff was going to seek post-judgment attorney's fees and costs, it should have filed its motion prior to seeking a deficiency judgment. By its late filing any post-judgment fees, the Plaintiff prevented the Court from properly considering those costs during the deficiency hearing. If the Plaintiff wanted Gordon Paving to pay its post-judgment costs, it should have filed the petition, allowed the Court to rule on it and amend the judgment accordingly, and afterwards filed its motion for a deficiency with the full amount it sought to collect from Gordon Paving. Since it filed its petition after its motion for default, the Court should deny the petition as untimely.

Also, by filing its petition too late, there is no judgment left for the Court to amend. When the Court ruled that the Plaintiff was not entitled to a deficiency, it effectively held that Sheriff's Sale satisfied the Judgment and Decree of Foreclosure in full. So, there is no mechanism that Plaintiff can use to collect its attorney's fees and costs and adding it to the satisfied judgment serves no purpose. Because the judgment is satisfied, no basis exists for the Court to find that Plaintiff is entitled to additional money from Gordon Paving.

II. The Bond Purchase Agreement Cannot be the Basis for a Post-Judgment Award of Attorney's Fees

The Idaho Supreme Court has held that it is "elementary that after judgment a cause of action based on a note is merged into the judgment thereby extinguishing the note as the basis for post-judgment collection proceedings." *Allison v. John M. Biggs, Inc.*, 826 P.2d 916, 917 (1992). Thus, the Bond Purchase Agreement can no longer be used as a basis to collect additional money from Gordon Paving. The note is extinguished and Plaintiff must rely on statutory means to recover additional fees.

III. Plaintiff's Request for Fees is not Reasonable

Both Idaho Code §12-120 and Idaho Rule of Civil Procedure 54 impose a requirement of reasonableness on any award of attorney fees. Thus, Gordon Paving objects to the reasonableness of the fees and costs Plaintiff now seeks. The hourly rates charged by Plaintiff's attorneys in this case were not reasonable rates for similar work by similarly experienced attorneys in the Magic Valley area. These rates range from \$440 per hour for an attorney with 11 years of experience to \$225 per hour for an attorney with only two years' experience. Also, the primary attorney on this case with 14 years of experience charged an hourly rate of \$375, which is less than the hourly rate of another less experienced lawyer in the same firm. Plaintiff gives no justification why these rates are so high; this was neither a novel nor particularly difficult question of law or fact and no other reason exists to excuse the high rates. Also, Plaintiff is seeking paralegal fees in this case whose hourly rates range from \$175 to \$200. All of these rates are shockingly high for a case brought and prosecuted in Twin Falls County and the Court should not impose additional fees as suggested by Plaintiff.

In addition to the exorbitant rates, the Affidavit of Bradley Dixon makes it impossible to determine if the amount of hours the attorneys spent on this case were reasonable or not. The affidavit makes several of the entries as "lump sums" on work for several different tasks. For example, a 4.8 hour entry made by Bradley Dixon on September 23, 2013, includes work for "Conference call with client re case states and plan for termination of forbearance agreement; review and analyze default correspondence; review and analyze decree of foreclosure; research necessity for renewing decree of foreclosure; finalize sale package; begin instruction letter to sheriff; draft and revise order re fees and costs." Without providing the Court with a break down the individual tasks, it is impossible to the Court to determine the reasonableness of the time spent on each item.

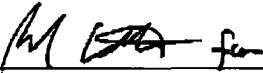
DEFENDANT'S OBJECTION TO REASONABLENESS OF FEES AND COSTS INCURRED BY PLAINTIFF - 3

Other items that appear to be unreasonable include the apparent charging of the full hourly rate for travel and the costs of travel for out of state counsel. It is customary to charge clients a half rate for travel time and no justification is given for bringing in counsel from out of state. This is especially hard to rationalize given the plethora of good attorneys in Idaho, including several at the Boise office of Plaintiff's legal team. It is true that Plaintiff has the right to choose its own counsel, but if it chooses expensive out of state attorneys, that cost should not be passed on to Gordon Paving.

Finally, it appears that Plaintiff has included some fees and costs that pertain to its motion for a deficiency. Since this Court has already ruled that Gordon Paving was the prevailing party on that matter, Plaintiff should not be able to add those costs to the judgment at this time.

For the foregoing reasons, Gordon Paving objects to Plaintiff's Petition for Post Judgment Attorney's Fees and Costs.

DATED this 5th day of December, 2014.

By: 
Brent T. Robinson
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 2014, I caused to be served the original of the foregoing, by the method indicated below, and addressed to the following:

Bradley J. Dixon, Esq.
Kersti H. Kennedy, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702

- ☐ U.S. Mail, Postage Prepaid
☐ Facsimile (208) 331-1529
☒ E-mail *bjdixon@stoel.com*
khkennedy@stoel.com
☐ Special Handling



Brent T. Robinson

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 DEC -8 AM 9:22

BY _____
CLERK
DEPUTY

Bradley J. Dixon, ISB No. 6167
 Email: *bradley.dixon@stoel.com*
 Kersti H. Kennedy, ISB No. 9064
 Email: *kersti.kennedy@stoel.com*
 STOEL RIVES LLP
 101 S Capitol Boulevard, Suite 1900
 Boise, ID 83702
 Telephone: (208) 389-9000
 Facsimile: (208) 389-9040

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
 an Idaho corporation; GORDON PAVING
 COMPANY, INC., an Idaho Corporation;
 BLACKROCK LAND HOLDINGS, LLC,
 an Idaho limited liability company; TOWN
 AND COUNTRY BANK, INC.; and FIRE
 SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**CLAIM OF EXEMPTION/THIRD PARTY
 CLAIM**

AgStar Financial Services, ACA ("AgStar") claims an exemption from levy for the following described money: the November 21, 2014 check from TKT Excavation and Trucking, Inc. made out to the offices of Robinson and Tribe, in the amount of approximately \$25,277.17, for the reason that: 1) the money is proceeds of collateral subject to AgStar's security interest, and alternatively 2) AgStar is entitled to an offset of judgments pursuant to I.R.C.P. 54, which

CLAIM OF EXEMPTION/THIRD PARTY CLAIM- 1

77735557.1 0047071-00001

would reduce but not eliminate the Defendants' debt, and therefore does not entitle the Defendants to execute upon AgStar's property.

AgStar claims a security interest in real and personal property of the Defendants, including the gravel that was excavated and sold by TKT Trucking. On November 21, 2013, the date of the foreclosure sale of the Defendants' real property, the value of AgStar's claim against the Defendants was approximately \$9,604,060.47. This indebtedness has been reduced by approximately \$7,400,000.00 as AgStar has liquidated the Defendants' collateral. However, AgStar's claim against the Defendants remains significant and continues to accrue interest, and thus AgStar claims the entirety of the TKT Trucking and Excavation check, both as proceeds of collateral subject to its security interest as well as its own property exempt from collection as the judgment against AgStar is only \$25,277.17 plus postjudgment interest.

DATED: December 8, 2014.

STOEL RIVES LLP

Kersti H. Kennedy

Bradley J. Dixon
Kersti H. Kennedy
Attorney for Plaintiff

CLAIM OF EXEMPTION/THIRD PARTY CLAIM- 2

77735557.1 0047071-00001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of December, 2014, I served a true and correct copy of the foregoing **CLAIM OF EXEMPTION/THIRD PARTY CLAIM** in the above-entitled matter as follows:

Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com <i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i>	<input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email
Twin Falls County Sheriff 425 Shoshone St. N. Twin Falls, ID Fax (208)736-4006	<input checked="" type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email

By: Kersti H. Kennedy
Kersti H. Kennedy

CLAIM OF EXEMPTION/THIRD PARTY CLAIM- 3

77735557.1 0047071-00001

Brent T. Robinson, Esq.
 ROBINSON & TRIBE
 Attorneys at Law
 P. O. Box 396
 Rupert, Idaho 83350
 Telephone (208) 436-4717
 Facsimile (208) 436-6804
 ISB No. 1932
 btr@idlawfirm.com

DISTRICT COURT
 TWIN FALLS CO. IDAHO
 FILED

2014 DEC 11 PM 4:59

BY _____ CLERK
 _____ DEPUTY

Attorneys for defendants
 Northwest Sand & Gravel, Inc.,
 Gordon Paving Company, Inc., and
 Blackrock Land Holdings, LLC

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

AGSTAR FINANCIAL SERVICES, ACA,)

Plaintiff,)

vs.)

NORTHWEST SAND & GRAVEL, INC., an)
 Idaho corporation; GORDON PAVING)
 COMPANY, INC., an Idaho corporation;)
 BLACKROCK LAND HOLDINGS, LLC, an)
 Idaho limited liability company; TOWN AND)
 COUNTRY BANK, INC.; and FIRE)
 SERVICE OF IDAHO, INC.)

Defendants)

Case No. CV-12-2731

**MOTION TO DISALLOW
 PLAINTIFF'S CLAIM OF
 EXEMPTION/THIRD PARTY CLAIM**

COME NOW the Defendants, by and through their attorney of record, Brent T.

Robinson of the firm Robinson & Tribe, and objects to the *Plaintiff's Claim Of Exemption/Third Party Claim* as follows:

I. Plaintiff Does Not Have a Security Interest

A security interest is defined as "an interest in personal property or fixtures which secures

MOTION TO DISSALLOW PLAINTIFF'S CLAIM OF EXEMPTION/THIRD PARTY CLAIM - 1

payment or performance of an *obligation*.” Idaho Code § 28-1-201 (2014)(emphasis added). At this time no obligation exists that subordinates Gordon Paving to a claim of the Plaintiff. The Plaintiff sold Gordon Paving real estate and sought a deficiency judgment against Gordon Paving. When the Court held that the real estate had a fair market value of at least \$11.7 million (well in excess of the judgment) and denied Plaintiff’s motion for a deficiency, Gordon Paving’s obligation to Plaintiff also perished. In other words, “[w]here the underlying debt has been extinguished, a security interest is no longer enforceable. *Roswell Capital Partners LLC v. Alt. Const. Technologies*, 08 CIV. 10647 DLC, 2010 WL 3452378, at *6 (S.D.N.Y. Sept. 1, 2010) *aff’d sub nom. Roswell Capital Partners LLC. v. Beshara*, 436 Fed. Appx. 34 (2d Cir. 2011)(unpublished). Since Plaintiff was paid in full by taking ownership of collateral in excess of the amount of the obligation, the security interest is no longer enforceable.

II. Any Lien Plaintiff May Have is Immaterial

During the period of redemption Plaintiff was entitled to reasonable rents and profits from Gordon Paving’s real estate. Accordingly, ITK Excavation and Trucking owed Plaintiff money per the agreement between Gordon Paving and Plaintiff for Plaintiff to receive \$1.50 per ton royalty for any gravel extracted. Any purported lien on the real estate does not change the fact that ITK owed Plaintiff a royalty check. This check is subject to garnishment the same as any other assets of the Plaintiff as allowed by Idaho Code. Gordon Paving executed a valid garnishment on ITK and should be allowed to collect the same.

III. The Foreclosure Sale of Gordon Paving’s Real Estate Eliminated any Debt Owed to Plaintiff


Plaintiff’s second alternative for its claim of exemption is that it is entitled to an offset of judgments pursuant to I.R.C.P. 54. Here again, no valid judgment exists for which Plaintiff would be entitled to an offset. The Sheriff’s Sale satisfied the judgment against Gordon

MOTION TO DISSALLOW PLAINTIFF’S CLAIM OF EXCEMPTION/THIRD PARTY CLAIM - 2

Paving leaving nothing to offset Gordon Paving's award of attorney's fees against.

Accordingly, Gordon Paving respectfully requests that the Court deny Plaintiff's claim of exemption/third party claim and allow the garnishment of proceeds from TKT Excavation and Trucking to continue.

DATED this 11th day of December, 2014.

By: 
Brent T. Robinson
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 2014, I caused to be served the original of the foregoing, by the method indicated below, and addressed to the following:

Bradley J. Dixon, Esq.
Kersti H. Kennedy, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702

☐ U.S. Mail, Postage Prepaid
☒ Facsimile (208) 331-1529
☒ E-mail bjdixon@stoel.com
khkennedy@stoel.com
☐ Special Handling



Brent T. Robinson

Brent T. Robinson, Esq.
 ROBINSON & TRIBE
 Attorneys at Law
 615 H Street
 P. O. Box 396
 Rupert, Idaho 83350-0396
 Telephone No. (208) 436-4717
 Facsimile No. (208) 436-6804
 Email Address: btr@idlawfirm.com
 Idaho State Bar No. 1932

DISTRICT COURT
 TWIN FALLS CO. IDAHO
 FILED

2014 DEC 11 PM 4:59

BY _____ CLERK
 _____ DEPUTY

Attorneys for Defendants Northwest Sand & Gravel, Inc.,
 Gordon Paving Company, Inc., and Blackrock Land
 Holdings, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,	)	Case No. CV-12-2731
)	
Plaintiff,)	
)	
vs.	)	EX-PARTE MOTION FOR EXTENSION
	)	OF TIME FOR HEARING
NORTHWEST SAND & GRAVEL, INC., an)	
Idaho corporation; GORDON PAVING)	
COMPANY, INC., an Idaho corporation;)	
BLACKROCK LAND HOLDINGS, LLC, an)	
Idaho limited liability company; TOWN AND)	
COUNTRY BANK, INC.; and FIRE)	
SERVICE OF IDAHO, INC.)	
)	
Defendants)	

COME NOW Defendants Northwest Sand & Gravel, Inc., Gordon Paving
 Company, Inc., and Blackrock Land Holdings, LLC, by and through their attorney, Brent T.
 Robinson of the firm Robinson & Tribe, and move the Court for an Order extending the time for

hearing on said Defendants' *Motion to Disallow Plaintiff's Claim of Exemption/Third Party Claim* based upon the following:

1. Counsel for said Defendants understands the statute provides that a hearing on said motion must be held not less than five (5) nor more than twelve (12) days after the date of filing such motion, which is being fax filed with the Court today.

2. That counsel for said Defendants has been informed that Judge Randy J. Stoker, the presiding Judge in this case, is not available for hearing within the statutory time frame and will not be available until February 9, 2015.

NOW, THEREFORE, counsel for Defendants Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc., and Blackrock Land Holdings, LLC, respectfully requests an extension of time for hearing on the above-referenced motion, and that the hearing be set for the 9th day of February, 2015, at 10 a.m. or as soon thereafter as the matter can be heard.

DATED this 11th day of December, 2014.

ROBINSON & TRIBE

By: 

Brent T. Robinson
Attorneys for Defendants Northwest Sand &
Gravel, Inc., Gordon Paving Company, Inc.,
and Blackrock Land Holdings, LLC,

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 2014, I caused a true and correct copy of the within and foregoing ex parte motion to be served upon the following by the method indicated below, to wit:

Bradley J. Dixon, Esq.
Kersti H. Kennedy, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702

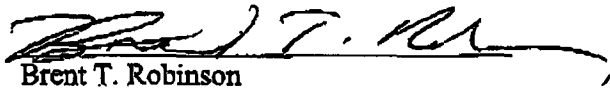
☐ U.S. Mail, Postage Prepaid

☒ Facsimile (208) 331-1529

☐ E-mail bjdixon@stoel.com;

☐ E-mail jmreinhardt@stoel.com

☐ Special handling _____


Brent T. Robinson

Brent T. Robinson, Esq.
 ROBINSON & TRIBE
 Attorneys at Law
 615 H Street
 P. O. Box 396
 Rupert, Idaho 83350-0396
 Telephone No. (208) 436-4717
 Facsimile No. (208) 436-6804
 Email Address: btr@idlawfirm.com
 Idaho State Bar No. 1932

DISTRICT COURT
Fifth Judicial District
 County of Twin Falls - State of Idaho

DEC 12 2014

By 12:00 PM
 Clerk
 Deputy Clerk

Attorneys for Defendants Northwest Sand & Gravel, Inc.,
 Gordon Paving Company, Inc., and Blackrock Land
 Holdings, LLC

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,)
)
 Plaintiff,)
)
 vs.)
)
 NORTHWEST SAND & GRAVEL, INC., an)
 Idaho corporation; GORDON PAVING)
 COMPANY, INC., an Idaho corporation;)
 BLACKROCK LAND HOLDINGS, LLC, an)
 Idaho limited liability company; TOWN AND)
 COUNTRY BANK, INC.; and FIRE)
 SERVICE OF IDAHO, INC.)
)
 Defendants)

Case No. CV-12-2731

ORDER GRANTING EX-PARTE
 MOTION FOR EXTENSION OF
 TIME FOR HEARING

THIS MATTER came before the Court upon the ex parte motion of counsel for

Defendants Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc., and Blackrock Land

Order Granting Ex-Parte Motion for
 Extension of Time for Hearing

- 1 -

Holdings, LLC. The Court having reviewed and consider the motion, being fully advised in the premises, and good cause appearing therefore, enters its Order as follows:

IT IS HEREBY ORDERED that the motion to extend the time for hearing on said Defendants' *Motion to Disallow Plaintiff's Claim of Exemption/Third Party Claim* is GRANTED.

IT IS FURTHER ORDERED that said motion shall be and the same is hereby set to come before this Court for hearing and disposition on for the 9th day of February, 2015, at 10 a.m. or as soon thereafter as the matter can be heard at the Twin Falls County Courthouse, 427 Shoshone Street, Twin Falls, Idaho.

IT IS SO ORDERED this 12th day of December, 2014.



Randy J. Stoker
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of December, 2014, I caused a true and correct copy of the within and foregoing Order to be served upon the following by the method indicated below, to wit:

Bradley J. Dixon, Esq.
Kersti H. Kennedy, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702

- ☐ U.S. Mail, Postage Prepaid
☒ Facsimile (208) 331-1529
☐ E-mail bjdixon@stoel.com;
☐ E-mail jmreinhardt@stoel.com
☐ Special handling _____

Brent T. Robinson, Esq.
Robinson & Tribe
PO Box 396
Rupert, ID 83350-0396

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☒ Facsimile (208) 436-6804
☐ E-mail bjdixon@stoel.com;
☐ E-mail jmreinhardt@stoel.com
☐ Special handling _____


Deputy Clerk

Bradley J. Dixon, ISB No. 6167
 Email: bjdixon@stoel.com
 Kersti H. Kennedy, ISB No. 9064
 Email: khkennedy@stoel.com
 STOEL RIVES LLP
 101 S Capitol Boulevard, Suite 1900
 Boise, ID 83702
 Telephone: (208) 389-9000
 Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
 TWIN FALLS CO., IDAHO
 FILED

2014 DEC 16 AM 8:12

BY



CLERK

DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
 an Idaho corporation; GORDON PAVING
 COMPANY, INC., an Idaho Corporation;
 BLACKROCK LAND HOLDINGS, LLC,
 an Idaho limited liability company; TOWN
 AND COUNTRY BANK, INC.; and FIRE
 SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**NOTICE OF HEARING RE PLAINTIFF'S
 PETITION FOR POST-JUDGMENT
 ATTORNEY'S FEES AND COSTS**

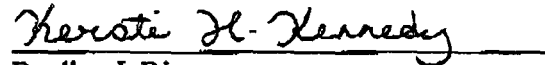
YOU ARE HEREBY NOTIFIED that Plaintiff, AgStar Financial Services, ACA by and through its counsel of record, Stoel Rives LLP, will call up for hearing its Petition for Post-Judgment Attorney's Fees and Costs on the 9th day of February, 2015, at the hour of 10:00 a.m., or as soon thereafter as counsel can be heard, before the Honorable Randy J. Stoker at the Twin Falls County Courthouse located at 425 Shoshone Street North, Twin Falls, Idaho.

**NOTICE OF HEARING RE PLAINTIFF'S PETITION FOR POST-JUDGMENT
 ATTORNEY FEES AND COSTS - 1**

77800424.1 0047071-00001

DATED: December 15, 2014.

STOEL RIVES LLP


Bradley J. Dixon
Kersti H. Kennedy
Attorney for Plaintiff

**NOTICE OF HEARING RE PLAINTIFF'S PETITION FOR POST-JUDGMENT
ATTORNEY FEES AND COSTS - 2**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 day of December, 2014, I served a true and correct copy of the foregoing **NOTICE OF HEARING RE PLAINTIFF'S PETITION FOR POST-JUDGMENT ATTORNEY'S FEES AND COSTS** in the above-entitled matter as follows:

Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com <i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i>	<input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

By:

Kersti H. Kennedy

Bradley J. Dixon

Kersti H. Kennedy

**NOTICE OF HEARING RE PLAINTIFF'S PETITION FOR POST-JUDGMENT
ATTORNEY FEES AND COSTS - 3**

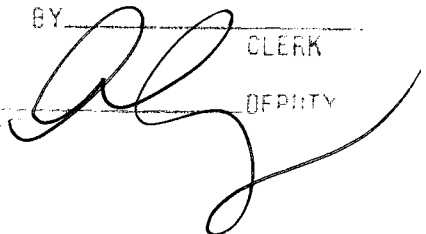
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Brent T. Robinson, Esq.
ROBINSON & TRIBE
Attorneys at Law
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 1932
btr@idlawfirm.com

Attorneys for defendants
Northwest Sand & Gravel, Inc.,
Gordon Paving Company, Inc., and
Blackrock Land Holdings, LLC

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2014 DEC 17 PM 4:33

BY  CLERK

DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

AGSTAR FINANCIAL SERVICES, ACA,)

Plaintiff,)

vs.)

NORTHWEST SAND & GRAVEL, INC., an)
Idaho corporation; GORDON PAVING)
COMPANY, INC., an Idaho corporation;)
BLACKROCK LAND HOLDINGS, LLC, an)
Idaho limited liability company; TOWN AND)
COUNTRY BANK, INC.; and FIRE)
SERVICE OF IDAHO, INC.)

Defendants)

Case No. CV-12-2731

NOTICE OF CROSS APPEAL

TO: The above named Appellant-Plaintiff and its attorney of record, Bradley J. Dixon and Kersti H. Kennedy, Stoel Rives LLP, 101 S. Capitol Boulevard, Suite 1900, Boise, ID, 83702, and the Clerk of the above entitled court

NOTICE IS HEREBY GIVEN THAT:

1. The above named Defendants, Northwest Sand & Gravel, Gordon Paving Company, Inc., and Blackrock Land Holdings, LLC, cross appeals against the above-named

Plaintiff, Agstar Financial Services, ACA, to the Idaho Supreme Court from the decisions of the Court rendered by the Honorable Randy J. Stoker on September 18, 2014, in open court and any Order pertaining to the same.

2. That the Cross-Appellant has a right to appeal to the Idaho Supreme Court from the aforementioned decision, the decision is appealable in accordance with Rule 11(a)(7) from the Order Approving Personal Property Collateral Auction entered on September 19, 2014, by the Honorable Randy J. Stoker.

3. Without waiving its rights to assert other issues on appeal, the preliminary issue on appeal which Cross-Appellant intends to assert is:

- (a) WHETHER THE COURT ERRED IN HOLDING THAT PLAINTIFF WAS ENTITLED TO SELL THE DEFENDANTS' PERSONAL PROPERTY COLLATERAL THAT WAS SUBJECT TO PLAINTIFF'S SECURITY INTEREST, EVEN THOUGH PLAINTIFF HAD PREVIOUSLY SOLD DEFENDANTS' REAL ESTATE COLLATERAL AT PUBLIC AUCTION AND THE COURT SUBSEQUENTLY DENIED ITS MOTION FOR A DEFICIENCY JUDGMENT, HOLDING THAT THE REAL ESTATE HAD A VALUE OF AT LEAST \$11,700,000, WHICH VALUE EXCEEDED ANY INDEBTEDNESS DEFENDANTS OWED TO PLAINTIFF.

4. It is hereby requested that the reporter provide a transcript in electronic format of the hearing before Judge Stoker, held on September 18, 2014 at 1:30 p.m., regarding Plaintiff's Motion for Order Directing the Defendants to Transfer Titles of Vehicles and for Comfort Order Re Personal Property Auction.

5. Cross Appellant requests that the following documents be included in the clerk's record in addition to those automatically included under Rule 28 IAR:

- (a) Order on Prepayment Penalty, filed June 19, 2013
- (b) Order for Sale, file July 3, 2013,

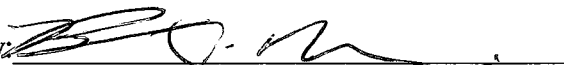
- (c) Order Granting Memorandum of Costs and Fees, filed September 30, 2013
- (d) Certificate of Sale, filed December 3, 2013
- (e) Memorandum Opinion Re Plaintiff's Motion for Deficiency Judgment, filed August 8, 2014
- (f) Plaintiff's Motion for Order Directing the Defendants to Transfer Titles of Vehicles and for Comfort Order Re Personal Property Auction, filed on September 4, 2014
- (g) Affidavit of Kersti H. Kennedy in Support of Motion for Order Directing the Defendants to Transfer Titles of Vehicles and for Comfort Order Re Personal Property Auction, filed on September 4, 2014
- (h) Defendants' Memorandum in Opposition to Plaintiffs Motion for Order Directing Defendants to Transfer titles of Vehicles and for Comfort Order Re Personal Property Auction, filed September 15, 2014
- (i) Plaintiff's Reply to Defendants' Opposition to Order Directing Defendants to Transfer Titles of Vehicles and for Comfort Order Re Personal Property Auction, filed on September 17, 2014.
- (j) Order Approving Personal Property Collateral Auction, filed September 19, 2014.

6. I HEREBY CERTIFY THAT:

- (a) A copy of this Notice of Cross Appeal has been served upon the Court Reporter;
- (b) The Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript;
- (c) The estimated fee for preparation of the Clerk's record has been paid;
- (d) The Cross Appellants' filing fee has been paid; and
- (e) Service has been made upon all parties required to be served pursuant to Rule 20 of the IAR.

DATED this 17th day of December, 2014.

ROBINSON & TRIBE

By: 
Brent T. Robinson
Attorney for Defendants

CERTIFICATE OF SERVICE

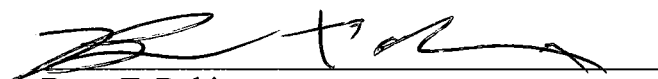
I hereby certify that on the 17th day of December, 2014, I caused to be served the original of the foregoing, by the method indicated below, and addressed to the following:

Bradley J. Dixon, Esq.
Kersti H. Kennedy, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702

- ☐ U.S. Mail, Postage Prepaid
☐ Facsimile (208) 331-1529
☒ E-mail *bjdixon@stoel.com*
khkennedy@stoel.com
☐ Special Handling

Court Reporter
Tracy Barksdale
425 Shoshone Street North
Twin Falls, Idaho 83303

- ☐ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☒ Special Handling


Brent T. Robinson

Bradley J. Dixon, ISB No. 6167
Email: bradley.dixon@stoel.com
Kersti H. Kennedy, ISB No. 9064
Email: kersti.kennedy@stoel.com
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2015 FEB -2 AM 11:41

BY CLERK
 DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO
DISALLOW CLAIM OF EXEMPTION/
THIRD PARTY CLAIM**

COMES NOW Plaintiff AgStar Financial Services, ACA ("AgStar"), by and through its counsel of record, Stoel Rives LLP, and hereby opposes Defendants' ("Gordon Paving") Motion to Disallow Plaintiff's Claim for Exemption [sic]/Third Party Claim ("Mot. to Disallow") dated December 11, 2014. AgStar is entitled to the TKT Trucking check for gravel currently being held by the sheriff, because AgStar's security interest covers the check, and AgStar's larger

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISALLOW CLAIM OF
EXEMPTION THIRD PARTY CLAIM- 1**

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judgment is not yet satisfied, thus barring Gordon Paving from executing on any of AgStar's property in satisfaction of its judgment for fees and costs.

I. ARGUMENT

A. AgStar's Security Interest Covers the Royalty Check, and AgStar is Allowed to Continue to Liquidate Its Collateral.

Gordon Paving claims that AgStar's security interest is no longer enforceable against the remaining collateral. (Mot. to Disallow at 2.) However, this is the exact issue that the Court already decided. (Order Approving Personal Property Collateral Auction, entered September 19, 2014.) AgStar may continue to liquidate collateral and apply it to the total indebtedness, regardless of the real property's fair market value. (*See Reply to Defendants' Opposition to Order Directing Defendants to Transfer Title of Vehicles and for Comfort Order re Personal Property Auction*, filed September 17, 2014.) Thus, AgStar may apply the royalty check at-issue to the remaining unsatisfied indebtedness. Again, the credit bid at the sheriff's sale, rather than the fair market value of the real property, determines that remaining indebtedness. (*See id.*) While Gordon Paving has appealed the issue of whether AgStar may continue to liquidate the collateral despite failing to obtain a deficiency judgment, Gordon Paving has not moved to stay execution, thus allowing AgStar to continue to collect and liquidate collateral.

B. Gordon Paving is Entitled to Recoupment or Setoff of the Amount of the Fees and Costs Judgment, But Even With a Recoupment or Setoff, AgStar's Judgment Remains Unsatisfied.

Gordon Paving may be entitled to a recoupment or setoff in the amount of the fees and costs judgment. I.R.C.P. 54(b)(1) authorizes the Court to enter a judgment setting off the amounts owed to Gordon Paving against AgStar's judgment. Of course, AgStar's judgment of over \$9.6 million remains unsatisfied to the tune of over \$2 million, so the fees and costs judgment of \$25,277.17 does not offset very much. (*See Claim of Exemption/Third Party Claim*,

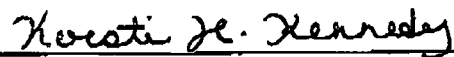
filed December 8, 2014.) However, should AgStar's judgment eventually be satisfied by liquidating Gordon Paving's collateral, Gordon Paving would be entitled to any surplus. The judgment has not, however, been satisfied, so at this point Gordon Paving is not entitled to receive anything from AgStar.

II. CONCLUSION

For the above reasons, Gordon Paving may not execute against the TKT royalty check, and AgStar is entitled to receive those funds as liquidated collateral in satisfaction of its judgment.

DATED: February 2, 2015.

STOEL RIVES LLP



Bradley J. Dixon
Kersti H. Kennedy
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February, 2015, I served a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISALLOW CLAIM OF EXEMPTION/THIRD PARTY CLAIM** in the above-entitled matter as follows:

<p>Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com</p> <p><i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i></p>	<p><input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email</p>
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By:

Kersti H. Kennedy
Kersti H. Kennedy

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISALLOW CLAIM OF EXEMPTION THIRD PARTY CLAIM- 4

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DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

2015 FEB -2 PM 3:30

BY _____ CLERK
_____ DEPUTY

Bradley J. Dixon, ISB No. 6167
Email: bradley.dixon@stoel.com
Kersti H. Kennedy, ISB No. 9064
Email: kersti.kennedy@stoel.com
STOEL RIVES LLP
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho Corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' OBJECTION TO
PLAINTIFF'S PETITION FOR POST
JUDGMENT FEES AND COSTS**

COMES NOW Plaintiff AgStar Financial Services, ACA ("AgStar"), by and through its
counsel of record, Stoel Rives LLP, and hereby opposes Defendants' ("Gordon Paving")
objection to Plaintiff's Petition for Post Judgment Fees and Costs dated December 5, 2014.

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' OBJECTION TO PLAINTIFF'S
PETITION FOR POST JUDGMENT FEES AND COSTS - 1**

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I. INTRODUCTION

AgStar is seeking its fees under I.C. §12-120(5), the provision applicable to post judgment fees and costs. AgStar's petition is timely, as I.C. §12-120(5) imposes no deadline for a petition requesting post judgment fees and costs, and AgStar need not request these fees before a deficiency judgment proceeding. Further, I.C. §12-120(5) allows for recovery of AgStar's fees regardless of whether the bond purchase agreements continue to govern the parties' relationship. Lastly, AgStar's requested fees for post judgment collection activities are reasonable, especially in light of the complex legal and factual issues at play in this case.

II. ARGUMENT

A. AgStar is Entitled to Seek Its Fees and Costs Under I.C. §12-120(5).

Last autumn, AgStar argued that Gordon Paving was barred from seeking its fees and costs related to the deficiency judgment trial because the bond purchase agreements placed liability for the fees on Gordon Paving, or alternatively, that Gordon Paving was not the prevailing party in the case-in-chief, so could not seek its fees under I.C. §12-120(5).

(Memorandum in Support of Plaintiff's Motion to Disallow Defendants' Request for Attorney's Fees and Costs, filed September 24, 2014; Reply in Support of Plaintiff's Motion to Disallow Defendants' Request for Attorney's Fees and Costs, filed November 6, 2014.) Ultimately the Court concluded that the language in the bond purchase agreements did not bar Gordon Paving from seeking its fees, and the deficiency judgment trial was really a separate proceeding, thus rendering I.C. §12-120(5) inapplicable. (*See* Reporter's Transcript, filed December 3, 2014.) Under that analysis, Gordon Paving was allowed to obtain a judgment on its fees and costs. *Id.*

Now, AgStar seeks its fees and costs related to collection efforts after the Judgment and Decree of Foreclosure was entered on June 19, 2013. Under the Court's analysis, the deficiency judgment is a separate action; therefore, the foreclosure itself must remain a separate proceeding

for the purposes of determining an award of fees. This result is the same under AgStar's perspective, which is that AgStar can seek any post-foreclosure fees either under the bond purchase agreements or as post judgment fees and costs.

Even if Gordon Paving is correct that the bond purchase agreements have been extinguished, AgStar's fees are still proper as post judgment fees and costs under I.C. §12-120(5).¹ That provision states:

In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

Id. AgStar won in the foreclosure case in chief and now is entitled to its fees and costs related to collection efforts. Further, I.C. §12-120(5) imposes no deadline for filing a petition. *Id.*

Gordon Paving characterizes the filing as "late," because the Court was not able to consider it as part of the total indebtedness at the time of the deficiency judgment. (Defendants' Objection to Plaintiff's Petition for Post Judgment Fees and Costs ("Def. Obj."), filed December 5, 2014 at 2.) However, Gordon Paving maintains at the same time that the deficiency judgment trial is a separate proceeding for the purpose of determining its own fees. Further, the deficiency judgment statute does not impose any deadline for determining the total indebtedness:

No court in the state of Idaho shall have jurisdiction to enter a deficiency judgment in any case involving a foreclosure of a mortgage on real property in any amount greater than the difference between the mortgage indebtedness, as determined by the decree, plus costs of foreclosure and sale, and the reasonable value of the mortgaged property, to be determined by the court in the decree upon the taking of evidence of such value.

¹ The bond purchase agreements allow for the recovery of reasonable attorney fees, rendering the analysis the same under either the agreements or I.C. § 12-120(5).

I.C. §6-108. Had AgStar won at the deficiency judgment hearing, it would be executing on non-collateral property of Gordon Paving, and certainly incurring additional fees and costs. Gordon Paving's logic would require AgStar to estimate its post judgment fees and costs for later executions at the time of the deficiency judgment hearing. Though, in this case, AgStar cannot pursue non-collateral property of the debtor, it must still engage in other post-foreclosure collection efforts. A secured creditor's "future attorney fees [form] part of the judgment and decree of foreclosure." *Farm Credit Bank of Spokane v. Newton*, 252 Mont. 336, 343, 829 P.2d 931, 935 (1992).

Gordon Paving also contends that AgStar's fees and costs have been satisfied as the result of the Court finding that AgStar failed to meet its burden in demonstrating that the property was worth less than the bond indebtedness. (Def. Obj. at 2.) The Court already ruled that AgStar may continue to liquidate collateral to satisfy its indebtedness. (Order Approving Personal Property Collateral Auction, September 19, 2014.) AgStar will continue to incur fees and costs as it liquidates that collateral, and is entitled to add that to the total bond indebtedness.

B. AgStar's Requested Fees Are Reasonable.

Gordon Paving contends that AgStar's counsel's rates are unreasonable, but the fees requested are proper. Rule 54(e)(3) sets forth the factors under which the Court determines the amount of attorney fees awarded:

- (A) The time and labor required.
- (B) The novelty and difficulty of the questions.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
- (D) The prevailing charges for like work.
- (E) Whether the fee is fixed or contingent.
- (F) The time limitations imposed by the client or the circumstances of the case.
- (G) The amount involved and the results obtained.
- (H) The undesirability of the case.

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' OBJECTION TO PLAINTIFF'S
PETITION FOR POST JUDGMENT FEES AND COSTS - 4**

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- (I) The nature and length of the professional relationship with the client.
- (J) Awards in similar cases.
- (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
- (L) Any other factor which the court deems appropriate in the particular case.

AgStar's counsel's rates are proper under this rule considering: the novelty and difficulty of the questions involved; the skill requisite to perform the legal services properly and the experience and ability of the attorney in the particular field of law; the amount involved and the results obtained; the undesirability of the case; and awards in similar cases.

Gordon Paving characterizes this case as a run-of-the-mill foreclosure. (Def. Obj. at 3.) However, it has been anything but a standard foreclosure. In addition to selling the real property at auction, post-foreclosure activities have included: 1) significant motion practice related to the writ of assistance to remove Gordon Paving from the property, which included numerous objections and motions for reconsideration from Gordon Paving; 2) haggling over royalties during the period of redemption, an issue which almost resulted in a second trial; 3) executing on, preparing, maintaining, and selling the significant amounts of personal property collateral, after obtaining the Court's blessing to do so through motion practice; 4) obtaining vehicle titles for numerous vehicles, which necessitated motion practice; 5) discovery in aid of execution; and 6) factual investigation related to missing personal property collateral. (See Affidavit of Bradley J. Dixon in Support of Plaintiff's Petition for Post-Judgment Attorney's Fees and Costs, filed November 21, 2014 at Ex. C.) Many of these activities required research into post-foreclosure collections matters, some of which were issues of first impression. (See, e.g., Motion for Order Directing the Defendants to Transfer Title of Vehicles and for Comfort Order re Personal

Property, filed September 4, 2014.) And, at every stage of this proceeding, Gordon Paving has defended its case aggressively.

These issues required an attorney with specialized skill and knowledge in the field of foreclosure law. The case's lead attorney, Bradley J. Dixon, has significant foreclosure experience, justifying a higher rate. The total indebtedness involved in this case is almost \$10 million, also calling for a specialized practitioner and for higher rates in general. (*See* Judgment and Decree of Foreclosure, entered June 19, 2013.)

While the case may not seem undesirable from the outside, it has been one fraught with constant problems and difficulties. As discussed, every small attempt to collect has been met with stonewalling and delays. The higher rates of AgStar's counsel are justified by the need to have practitioners constantly vigilant and ready to respond should yet another issue arise.

Further, the Court has already awarded AgStar attorney fees under the Stoel Rives rates. (Order Granting Memorandum of Costs and Fees, September 30, 2013.) This is not an award of fees in a similar case, but it is one in the *same* case. At that time of the original petition for fees, Gordon Paving failed to dispute AgStar's counsel's rates, and has therefore waived the argument that the rates are unreasonable.

Next, Gordon Paving disputes the charges generally because some entries are "lump sums." (Def. Obj. at 3.) Other than one charge, Gordon Paving has failed to point to specific charges and explain why they are unreasonable, and therefore the Court should disregard this particular challenge as to the other charges as Gordon Paving bears the burden of pointing to specific unreasonable charges. *See In re Univ. Place/Idaho Water Ctr. Project*, 146 Idaho 527, 545, 199 P.3d 102, 120 (2008). Further, presumably the Court evaluates such types of entries all

the time under the requirements of Rule 54(e)(3). Gordon Paving fails to explain how this type of entry prevents the Court from conducting an overall analysis of reasonableness.

Gordon Paving also challenges entries for travel time, including for an out-of-state attorney. (Def. Obj. at 4.) Gordon Paving contends that it is customary to charge half rate for travel time, but provides no evidence of this assertion. *See id.* Gordon Paving also challenges the travel entries for Erin Eliason, a Seattle attorney, for her travel to Boise for work on the parties' forbearance agreement on July 11, 2013. *Id.* Ms. Eliason specializes in large scale forbearance agreements and bankruptcy work. Her presence was actually requested in Idaho by Gordon Paving to complete the forbearance agreement that Gordon Paving breached.

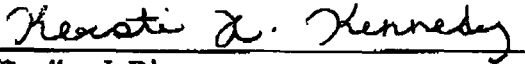
Lastly, Gordon Paving has vaguely disputed some charges because they are allegedly related to the deficiency judgment trial. AgStar has attempted to remove all such charges, as the Court already indicated it would not award AgStar its fees and costs for that trial. AgStar will defer the issue of fees related to the deficiency judgment action to the Supreme Court appeal. Gordon Paving does not indicate which charges it believes relate to the deficiency judgment, and so such challenge should be disregarded.

III. CONCLUSION

For the foregoing reasons, AgStar's petition for fees and costs related to post judgment matters should be granted.

DATED: February 2, 2015.

STOEL RIVES LLP


Bradley J. Dixon
Kersti H. Kennedy
Attorney for Plaintiff

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' OBJECTION TO PLAINTIFF'S
PETITION FOR POST JUDGMENT FEES AND COSTS - 8**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February, 2015, I served a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANTS' OBJECTION TO PLAINTIFF'S PETITION FOR POST JUDGMENT FEES AND COSTS** in the above-entitled matter as follows:

Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350 Facsimile: (208) 436-6804 Email: BTR@idlawfirm.com <i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i>	<input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Overnight Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via email
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By: Kersti H. Kennedy
Kersti H. Kennedy

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' OBJECTION TO PLAINTIFF'S
PETITION FOR POST JUDGMENT FEES AND COSTS - 9**

78128314.1 0047071-00001

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

FEB 10 2015

By 8:35 AM
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

vs.

NORTHWEST SAND AND GRAVEL, et.
al.,

Defendants.

Case No. CV 2012-2731

ORDER RE ATTORNEY FEE CLAIM

Plaintiff's claim for post judgment attorney fees pursuant to I.C. §12-120(5) and discretionary costs is GRANTED in part and DENIED in part as follows. In denying the claims the Court finds that the claimed fees are either duplicative charges between attorneys, relate to the deficiency judgment litigation, relate to the Idaho Asphalt litigation or the Motion to Intervene issue, involve an assignment of judgment issue, the latter four issues which are not properly covered by this statute, or are otherwise unreasonable, excessive, unnecessary or not substantiated by sufficient detail for the Court to determine these issues.

These fee claims are DENIED: 8/27/13--\$1034; 8/28/13--\$44; 8/28/13--\$72; 8/28/13--\$88; 8/28/13--\$154; 8/29/13--\$22; 9/3/13--72; 9/4/13--\$22; 9/7/13--\$396;

9/9/13--\$2200; 9/10/13--\$506; 10/2/13--\$500; 10/10/13--\$462;; 10/14/13--\$22;;
10/21/13--\$132; 11/4/13--\$1008; 11/6/13--\$44; 11/6/13--\$72; 11/8/13--\$44; 11/11/13--
\$1728; 11/13/13--\$396; 11/14/13--\$242; 11/21/13--\$1408; 11/25/13--\$1152; 12/3/13--
\$66; 12/4/13--\$396; 12/5/13--\$1122; 12/9/13--\$594; 12/13/13--\$682; 12/16/13--\$990;
12/18/13--\$756; 1/6/14--\$225; 1/13/14--\$67.50; 1/18/14--\$112.5; 1/21/14--112.50;
1/23/14--\$862.50; 1/27/14--\$180; 1/29/14--\$22.50; 2/3/14--\$1050; 2/4/14--\$150;
2/4/14--\$292.50; 2/6/14--\$1462.50; 2/11/14--\$450; 2/19/14--\$75; 2/19/14--\$100;
2/24/14--\$1612.50; 3/17/14--\$825; 3/20/14--\$787.50; 3/26/14--\$1912.50; 3/27/14--
\$112.50; 4/1/14--\$825; 4/3/14--\$412.50; 4/9/14--\$112.50; 4/9/14--\$787.50; 4/10/14--
\$1012.50; 4/15/14--\$937.50; 5/8/14--\$90; 5/14/14--\$3262.50; 5/15/15--\$247.50;
5/16/14--\$2475; 5/21/14--\$1087.50; 5/26/14--\$3637.50; 5/28/14--\$646; 5/29/14--\$136;
5/29/14--\$3300; 7/10/14--\$600; 7/17/14--\$1575; 8/25/14--\$787.50; 8/28/14--\$1350;
9/2/14--\$1537.50; 9/18/14--\$750; 9/22/14--\$112.50; 9/24/14--\$825; 9/25/14--\$750;
10/3/14--\$75; 11/3/14--\$240.

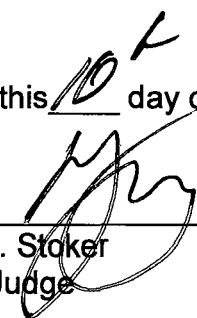
Total Disallowed Fees: \$50,773

Total Claimed Fees: \$135282.50

Total Fees Awarded: \$84,509.50

The Court will award only the publication fees requested as discretionary costs, totaling \$2717. The balance is disallowed.

DATED this 10th day of February, 2015.



Randy J. Stoker
District Judge

CERTIFICATE OF SERVICE

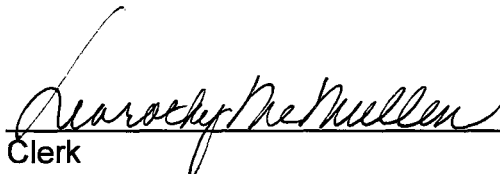
I hereby certify that on the 10 day of February 2015, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Brad Dixon
101 S. Capitol Blvd, Suite 1900
Boise, Idaho 83702

☒ U.S. Mail
☐ Hand delivered
☐ Faxed
☐ Court Folder

Brent Robinson
P.O. Box 396
Rupert, Idaho 83350

☒ U.S. Mail
☐ Hand delivered
☐ Faxed
☐ Court Folder


Clerk

Bradley J. Dixon, ISB No. 6167
Email: bjdixon@stoel.com
Kersti H. Kennedy, ISB No. 9064
Email: khkennedy@stoel.com
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiff

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

FEB 20 2015

By _____ 11:30 AM

Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

v.

NORTHWEST SAND & GRAVEL, INC.,
an Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho corporation;
BLACKROCK LAND HOLDINGS, LLC,
an Idaho limited liability company; TOWN
AND COUNTRY BANK, INC.; and FIRE
SERVICE OF IDAHO, INC.,

Defendants.

Case No. CV 12-2731

**ORDER ALLOWING
CLAIM OF EXEMPTION TO THE
ROYALTY CHECK**

This matter came before the Court on February 9, 2015 on the Defendants' Motion to Disallow Plaintiff's Claim of Exemption/Third Party Claim to the royalty check (check dated November 21, 2014 from TKT Excavation and Trucking, Inc. made out to Robinson and Tribe in the amount of \$25,277.17) executed upon by Defendants. The Court acknowledges that the Plaintiff has the superior claim to the royalty check being held by the Twin Falls County Sheriff.

NOW THEREFORE IT IS HEREBY ORDERED that the Defendants' Motion to Disallow the Claim of Exemption is hereby DENIED, and that the Twin Falls County Sheriff release the royalty check to Plaintiff.

DATED: 2/20/15, 2015.



Judge Randy J. Stoker

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2-20, 2015, I served a true and correct copy of the foregoing the **ORDER ALLOWING CLAIM OF EXEMPTION TO THE ROYALTY CHECK** in the above-entitled matter as follows:

<p>Brent T. Robinson, Esq. ROBINSON & TRIBE P.O. Box 396 Rupert, ID 83350</p> <p><i>Attorneys for Defendants: Northwest Sand & Gravel, Inc. Gordon Paving Company, Inc. Blackrock Land Holdings, LLC</i></p>	<p><input type="checkbox"/> Via email: BTR@idlawfirm.com</p> <p><input checked="" type="checkbox"/> Via Fax: (208) 436-6804</p>
<p>Bradley J. Dixon Kersti H. Kennedy STOEL RIVES LLP 101 S Capitol Boulevard, Suite 1900 Boise, ID 83702</p> <p><i>Attorneys for Plaintiff</i></p>	<p><input type="checkbox"/> Via email: kersti.kennedy@stoel.com</p> <p><input checked="" type="checkbox"/> Via Fax: (208) 389-9040</p>

By:


Clerk of the Court

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
DISTRICT COURT

SHERIFF# 20144946
COURT CASE# CV12-2731

PLAINTIFF: AGSTAR FINANCIAL SERVICES
VS
DEFENDANT: NORTHWEST SAND & GRAVEL INC.

2015 FEB 20 PM 2:57

SHERIFF'S OFFICE,
COUNTY OF TWIN FALLS,
STATE OF IDAHO.

ss.

Another Amended

SHERIFF'S RETURN ON A CONTINUOUS
WRIT OF EXECUTION

I, SHERIFF TOM CARTER, Sheriff of the County of Twin Falls, State of
Idaho, hereby certify that I received the attached writ of EXECUTION
on the 21 day of NOVEMBER, 2014; that by virtue thereof I served
upon TKT EXCAVATION & TRUCKING

a copy of the said writ and a notice that all debts and credits owing to
the defendant... by such person are attached in pursuance of such writ
on the 21 day of NOVEMBER, 2014, in TWIN FALLS COUNTY, IDAHO.

That from the said TKT EXCAVATION & TRUCKING

I Received \$ 25,392.17.

From this Amount \$.00 was returned to the Defendant,

\$ 25,392.17 was withheld, from which

- \$ 75.00 Sheriff's fees were deducted,

LEAVING \$ 25,317.17 which I am submitting to the
Plaintiff to be applied on the
Judgement as final payment.

The original documents have been returned to the Clerk of the Court.

For which I give Receipt and which I hold subject to Court Order.

Dated this 20 day of FEBRUARY, 2015

By

Julie Munn
Julie Munn, Deputy for
SHERIFF TOM CARTER
Sheriff of Twin Falls County
208-736-4064

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
DISTRICT COURT

SHERIFF# 20144946
COURT CASE# CV12-2731

PLAINTIFF: AGSTAR FINANCIAL SERVICES
VS
DEFENDANT: NORTHWEST SAND & GRAVEL INC.

* Amended

SHERIFF'S OFFICE,
COUNTY OF TWIN FALLS,
STATE OF IDAHO.

ss.

SHERIFF'S RETURN ON A CONTINUOUS
WRIT OF EXECUTION

I, SHERIFF TOM CARTER, Sheriff of the County of Twin Falls, State of
Idaho, hereby certify that I received the attached writ of EXECUTION
on the 21 day of NOVEMBER, 2014; that by virtue thereof I served
upon TKT EXCAVATION & TRUCKING

a copy of the said writ and a notice that all debts and credits owing to
the defendant... by such person are attached in pursuance of such writ
on the 21 day of NOVEMBER, 2014, in TWIN FALLS COUNTY, IDAHO.

That from the said TKT EXCAVATION & TRUCKING

I Received \$.00.

From this Amount \$.00 was returned to the Defendant,

\$.00 was withheld, from which

- \$.00 Sheriff's fees were deducted,

LEAVING \$.00 which I am submitting to the
Plaintiff to be applied on the
Judgement.

The original documents have been returned to the Clerk of the Court.

For which I give Receipt and which I hold subject to Court Order.

* The original return was made in error. The claim of exemption
period had not been completed. The monies are still being held.

Dated this 28 day of NOVEMBER, 2014

By

Julie Munn
Julie Munn, Deputy for
SHERIFF TOM CARTER

Sheriff of Twin Falls County
208-736-4064

Brent T. Robinson, Esq.
ROBINSON & TRIBE
Attorneys at Law
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 1932
btr@idlawfirm.com

Attorneys for defendants
Northwest Sand & Gravel, Inc.,
Gordon Paving Company, Inc., and
Blackrock Land Holdings, LLC

RECEIVED

2014 NOV 21 PM 2 23

TWIN FALLS
COUNTY CLERK

*Original
was returned
in error on
11-28-14.
Claim of exemption
filed and monies
awarded to
plaintiff.*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,

Plaintiff,

vs.

NORTHWEST SAND & GRAVEL, INC., an
Idaho corporation; GORDON PAVING
COMPANY, INC., an Idaho corporation;
BLACKROCK LAND HOLDINGS, LLC, an
Idaho limited liability company; TOWN AND
COUNTRY BANK, INC.; and FIRE SERVICE
OF IDAHO, INC.

Defendants

Case No. CV-12-2731

EXECUTION

THE PEOPLE OF THE STATE OF IDAHO

TO: THE SHERIFF OF THE COUNTY OF TWIN FALLS COUNTY, IDAHO GREETING:

Execution

- 1 -

WHEREAS, on the 18th day of November, 2014, defendants Northwest Sand & Gravel, Inc., Gordon Paving Company, Inc., and Blackrock Land Holdings, LLC, ("Gordon Paving") recovered a Judgment in the said District Court of the County of Twin Falls against plaintiff AgStar Financial Services, ACA, for costs in the sum of Two Thousand Nine Hundred Eleven and 16/100 Dollars (\$2,911.16), discretionary costs in the sum of Eight Hundred Fifty-four and 01/100 Dollars (\$854.01), and attorney's fees in the sum of Twenty-one Thousand Five Hundred Twelve Dollars (\$21,512), for a total of costs and fees of Twenty-five Thousand Two Hundred Seventy-seven and 17/100 Dollars (\$25,277.17), said judgment to bear interest at the highest legal rate until satisfied.

AND WHEREAS, the Judgment Roll in the action in which said Judgment was entered, is filed in the Clerk's office of said Court in the County of Twin Falls and the said Judgment was docketed in said Clerk's office, in the said County on the day and year first above written. And the sum of Twenty-five Thousand Two Hundred Seventy-seven and 17/100 Dollars (\$25,277.17) with interest from November 18, 2014, is now, at the date of this writ, actually due on said Judgment.

NOW, you, the said Sheriff, are hereby required to satisfy said Judgment, with interest as aforesaid, and costs and accruing costs, out of the personal property of said plaintiff, judgment debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to said debtor on the day when said Judgment was docketed in Twin Falls County, or at any time thereafter, and make return of this writ within sixty (60) days after the receipt hereof, with what you have done endorsed thereon.

WITNESS Honorable Randy J. Stoker, District Judge of the said Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, this 21 day of Nov, 2014.

ATTEST my hand and the seal of said Court, the day and year last above written.

CLERK OF THE COURT

By: bbamyan
Deputy Clerk

Shaw

Brent T. Robinson, Esq.
 ROBINSON & TRIBE
 Attorneys at Law
 P. O. Box 396
 Rupert, Idaho 83350
 Telephone (208) 436-4717
 Facsimile (208) 436-6804
 ISB No. 1932
 btr@idlawfirm.com

DISTRICT COURT
 TWIN FALLS CO., IDAHO
 FILED

2015 MAR 11 AM 11:13

BY _____ CLERK

_____ *SR* DEPUTY

Attorneys for Defendants
 Northwest Sand & Gravel, Inc.,
 Gordon Paving Company, Inc., and
 Blackrock Land Holdings, LLC

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

AGSTAR FINANCIAL SERVICES, ACA,)

SUPREME COURT NO. 42932

Plaintiff,)

Case No. CV-12-2731

vs.)

NORTHWEST SAND & GRAVEL, INC., an)
 Idaho corporation; GORDON PAVING)
 COMPANY, INC., an Idaho corporation;)
 BLACKROCK LAND HOLDINGS, LLC, an)
 Idaho limited liability company; TOWN AND)
 COUNTRY BANK, INC.; and FIRE)
 SERVICE OF IDAHO, INC.)

**AMENDED
 NOTICE OF CROSS APPEAL
 (Amended to include in the Appeal the
 Order Re Attorney Fee Claim dated
 February 10, 2015 and Order Allowing
 Claim of Exemption to Royalty Check
 dated February 20, 2015)**

Defendants)

TO: The above-named Appellant-Plaintiff and its attorneys of record, Bradley J. Dixon and Kersti H. Kennedy, and the Clerk of the above-entitled court

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Defendants, Northwest Sand & Gravel, Gordon Paving Company, Inc., and Blackrock Land Holdings, LLC, cross appeal against the above-named

AMENDED NOTICE OF CROSS APPEAL - 1

Plaintiff, Agstar Financial Services, ACA, to the Idaho Supreme Court from the decisions of the Court rendered by the Honorable Randy J. Stoker on September 18, 2014, in open court, the **Order Re Attorney Fee Claim dated February 10, 2015**, and any Order pertaining to the same.

2. That the Cross-Appellants have a right to appeal to the Idaho Supreme Court from the aforementioned decision and order. The decision and order are appealable in accordance with Rule 11(a)(7) from the Order Approving Personal Property Collateral Auction entered on September 19, 2014, and the Order Re Attorney Fee Claim by the Honorable Randy J. Stoker.

3. Without waiving its rights to assert other issues on appeal, the preliminary issues on appeal which Cross-Appellants intend to assert is:

- (a) WHETHER THE COURT ERRED IN HOLDING THAT PLAINTIFF WAS ENTITLED TO SELL THE DEFENDANTS' PERSONAL PROPERTY COLLATERAL THAT WAS SUBJECT TO PLAINTIFF'S SECURITY INTEREST, EVEN THOUGH PLAINTIFF HAD PREVIOUSLY SOLD DEFENDANTS' REAL ESTATE COLLATERAL AT PUBLIC AUCTION AND THE COURT SUBSEQUENTLY DENIED ITS MOTION FOR A DEFICIENCY JUDGMENT, HOLDING THAT THE REAL ESTATE HAD A VALUE OF AT LEAST \$11,700,000, WHICH VALUE EXCEEDED ANY INDEBTEDNESS DEFENDANTS OWED TO PLAINTIFF.
- (b) WHETHER PLAINTIFF'S PETITION FOR POST-JUDGMENT ATTORNEYS' FEES AND COSTS WAS TIMELY AND WHETHER RULE 54 OF I.R.C.P. WOULD ALLOW THE ATTORNEY AWARDING AND WHETHER THE DISTRICT COURT ERRED IN ALLOWING A THIRD PARTY CLAIM AS TO PROPERTY GARNISHED BY CROSS-APPELLANT.
- (c) WHETHER THE COURT ERRED WHEN IT ISSUED AN ORDER ALLOWING THE CLAIM OF EXEMPTION/THIRD PARTY CLAIM TO THE ROYALTY CHECK AND THUS DID NOT ALLOW THE GARNISHMENT OF THOSE FUNDS TO OCCUR.

AMENDED NOTICE OF CROSS APPEAL - 2

4. It is hereby requested that the reporter provide a transcript in electronic format of the hearing before Judge Stoker, held on September 18, 2014 at 1:30 p.m., regarding Plaintiff's Motion for Order Directing the Defendants to Transfer Titles of Vehicles and for Comfort Order Re Personal Property Auction.

5. It is further requested that the reporter provide a transcript in electronic format of the hearing before Judge Stoker held on December 16, 2014, at 10:00 a. m., regarding Plaintiff's Petition for Post-Judgment Attorney's Fees and Costs.

6. Cross-Appellants request that the following documents be included in the clerk's record in addition to those automatically included under Rule 28 IAR:

- (a) Order on Prepayment Penalty, filed June 19, 2013
- (b) Order for Sale, file July 3, 2013,
- (c) Order Granting Memorandum of Costs and Fees, filed September 30, 2013
- (d) Certificate of Sale, filed December 3, 2013
- (e) Memorandum Opinion Re Plaintiff's Motion for Deficiency Judgment, filed August 8, 2014
- (f) Plaintiff's Motion for Order Directing the Defendants to Transfer Titles of Vehicles and for Comfort Order Re Personal Property Auction, filed on September 4, 2014
- (g) Affidavit of Kersti H. Kennedy in Support of Motion for Order Directing the Defendants to Transfer Titles of Vehicles and for Comfort Order Re Personal Property Auction, filed on September 4, 2014
- (h) Defendants' Memorandum in Opposition to Plaintiffs Motion for Order Directing Defendants to Transfer titles of Vehicles and for Comfort Order Re Personal Property Auction, filed September 15, 2014
- (i) Plaintiff's Reply to Defendants' Opposition to Order Directing Defendants to Transfer Titles of Vehicles and for Comfort Order

Re Personal Property Auction, filed on September 17, 2014.

- (j) Order Approving Personal Property Collateral Auction, filed September 19, 2014.
- (k) Plaintiff's Petition for Post-Judgment Attorney's Fees and Costs.
- (l) Memorandum in Support of Plaintiff's Petition for Post-Judgment Attorney's Fees and Costs
- (m) Affidavit of Bradley J. Dixon in Support of Plaintiff's Petition for Post-Judgment Attorney's Fees and Costs
- (n) Sheriff's Return, TKT Excavation & Trucking, 11/21/2014 (court repository entry 11/24/2014)
- (o) Writ Returned (court repository entry 11/24/2014)
- (p) Sheriff's Return, TKT Excavation & Trucking, 11/21/2014 (court repository entry 11/28/2014)
- (q) Defendants' Objection to Plaintiff's Petition for Post-Judgment Fees and Costs
- (r) Claim of Exemption / Third Party Claim
- (s) Motion to Disallow Plaintiff's Claim of Exemption/Third Party Claim
- (t) Ex-Parte Motion for Extension of Time for Hearing
- (u) Order Granting Ex-Parte Motion for Extension of Time for Hearing
- (v) Notice of Hearing Re Plaintiff's Petition for Post-Judgment Attorney's Fees and Costs
- (w) Hearing Scheduled (court repository entry 12/16/2014)
- (x) Notice of Cross Appeal
- (y) Plaintiff's Opposition to Defendants' Motion to Disallow Claim of Exemption/Third Party Claim
- (z) Plaintiff's Opposition to Defendants' Objection to Plaintiff's Petition for Post-Judgment Fees and Costs

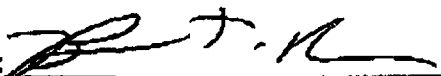
- (aa) Hearing result for Motion (court repository entry 02/09/2015)
- (bb) Hearing result for Motion for Attorney fees and Costs (court repository entry 02/09/2015)
- (cc) Order Re Attorney Fee Claim
- (dd) Order Allowing Claim of Exemption to the Royalty Check
- (ee) Sheriff's Return, TKT Excavation & Trucking, 11/21/2014 (court repository entry 2/20/2015)

7. I HEREBY CERTIFY THAT:

- (a) A copy of this Amended Notice of Cross Appeal has been served upon the Court Reporter;
- (b) The Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript;
- (c) The estimated fee for preparation of the Clerk's record has been paid;
- (d) The Cross Appellants' filing fee has been paid; and
- (e) Service has been made upon all parties required to be served pursuant to Rule 20 of the IAR.

DATED this 11th day of March, 2015.

ROBINSON & TRIBE

By: 
Brent T. Robinson
Attorneys for Northwest Sand & Gravel,
Inc.; Gordon Paving Company, Inc.;
Blackrock Land Holdings, LLC

CERTIFICATE OF SERVICE


I hereby certify that on the 11th day of March, 2015, I caused to be served the original of the foregoing, by the method indicated below, and addressed to the following:

Bradley J. Dixon, Esq.
Kersti H. Kennedy, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702

☐ U.S. Mail, Postage Prepaid
☐ Facsimile (208) 331-1529
☒ E-mail *bjdixon@stoel.com*
khkennedy@stoel.com
☐ Special Handling

Court Reporter
Tracy Barksdale
425 Shoshone Street North
Twin Falls, Idaho 83303

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail
☐ Special Handling


Brent T. Robinson

Brent T. Robinson, Esq.
 ROBINSON & TRIBE
 Attorneys at Law
 P. O. Box 396
 Rupert, Idaho 83350
 Telephone (208) 436-4717
 Facsimile (208) 436-6804
 ISB No. 1932
 btr@idlawfirm.com

DISTRICT COURT
 TWIN FALLS CO. IDAHO
 FILED

2015 MAR 19 AM 9:34

BY _____ CLERK

 DEPUTY

Attorneys for Defendants
 Northwest Sand & Gravel, Inc.,
 Gordon Paving Company, Inc., and
 Blackrock Land Holdings, LLC

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

AGSTAR FINANCIAL SERVICES, ACA,	)	SUPREME COURT NO. 42932
	)	Case No. CV-12-2731
Plaintiff,)	
)	
vs.)	
)	
NORTHWEST SAND & GRAVEL, INC., an	)	CORRECTED AMENDED
Idaho corporation; GORDON PAVING	)	NOTICE OF CROSS APPEAL
COMPANY, INC., an Idaho corporation;	)	(Amended to include in the Appeal the
BLACKROCK LAND HOLDINGS, LLC, an	)	Order Re Attorney Fee Claim dated
Idaho limited liability company; TOWN AND	)	February 10, 2015 and Order Allowing
COUNTRY BANK, INC.; and FIRE	)	Claim of Exemption to Royalty Check
SERVICE OF IDAHO, INC.	)	dated February 20, 2015)
)	
Defendants)	

TO: The above-named Appellant-Plaintiff and its attorneys of record, Bradley J. Dixon and Kersti H. Kennedy, and the Clerk of the above-entitled court

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Defendants, Northwest Sand & Gravel, Gordon Paving Company, Inc., and Blackrock Land Holdings, LLC, cross appeal against the above-named

CORRECTED AMENDED NOTICE OF CROSS APPEAL - 1

Plaintiff, Agstar Financial Services, ACA, to the Idaho Supreme Court from the decisions of the Court rendered by the Honorable Randy J. Stoker on September 18, 2014, in open court, the **Order Re Attorney Fee Claim dated February 10, 2015**, and any Order pertaining to the same.

2. That the Cross-Appellants have a right to appeal to the Idaho Supreme Court from the aforementioned decision and order. The decision and order are appealable in accordance with Rule 11(a)(7) from the Order Approving Personal Property Collateral Auction entered on September 19, 2014, and the Order Re Attorney Fee Claim by the Honorable Randy J. Stoker.

3. Without waiving its rights to assert other issues on appeal, the preliminary issues on appeal which Cross-Appellants intend to assert is:

- (a) WHETHER THE COURT ERRED IN HOLDING THAT PLAINTIFF WAS ENTITLED TO SELL THE DEFENDANTS' PERSONAL PROPERTY COLLATERAL THAT WAS SUBJECT TO PLAINTIFF'S SECURITY INTEREST, EVEN THOUGH PLAINTIFF HAD PREVIOUSLY SOLD DEFENDANTS' REAL ESTATE COLLATERAL AT PUBLIC AUCTION AND THE COURT SUBSEQUENTLY DENIED ITS MOTION FOR A DEFICIENCY JUDGMENT, HOLDING THAT THE REAL ESTATE HAD A VALUE OF AT LEAST \$11,700,000, WHICH VALUE EXCEEDED ANY INDEBTEDNESS DEFENDANTS OWED TO PLAINTIFF.
- (b) WHETHER PLAINTIFF'S PETITION FOR POST-JUDGMENT ATTORNEYS' FEES AND COSTS WAS TIMELY AND WHETHER RULE 54 OF I.R.C.P. WOULD ALLOW THE ATTORNEY AWARDING AND WHETHER THE DISTRICT COURT ERRED IN ALLOWING A THIRD PARTY CLAIM AS TO PROPERTY GARNISHED BY CROSS-APPELLANT.
- (c) WHETHER THE COURT ERRED WHEN IT ISSUED AN ORDER ALLOWING THE CLAIM OF EXEMPTION/THIRD PARTY CLAIM TO THE ROYALTY CHECK AND THUS DID NOT ALLOW THE GARNISHMENT OF THOSE FUNDS TO OCCUR.

4. It is hereby requested that the reporter provide a transcript in electronic format of the hearing before Judge Stoker, held on September 18, 2014 at 1:30 p.m., regarding Plaintiff's Motion for Order Directing the Defendants to Transfer Titles of Vehicles and for Comfort Order Re Personal Property Auction.

5. It is further requested that the reporter provide a transcript in electronic format of the hearing before Judge Stoker held on February 9, 2015, at 10:00 a. m., regarding Plaintiff's Petition for Post-Judgment Attorney's Fees and Costs.

6. Cross-Appellants request that the following documents be included in the clerk's record in addition to those automatically included under Rule 28 IAR:

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- (b) Order for Sale, file July 3, 2013,
- (c) Order Granting Memorandum of Costs and Fees, filed September 30, 2013
- (d) Certificate of Sale, filed December 3, 2013
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- (h) Defendants' Memorandum in Opposition to Plaintiffs Motion for Order Directing Defendants to Transfer titles of Vehicles and for Comfort Order Re Personal Property Auction, filed September 15, 2014
- (i) Plaintiff's Reply to Defendants' Opposition to Order Directing Defendants to Transfer Titles of Vehicles and for Comfort Order

Re Personal Property Auction, filed on September 17, 2014.

- (j) Order Approving Personal Property Collateral Auction, filed September 19, 2014.
- (k) Plaintiff's Petition for Post-Judgment Attorney's Fees and Costs.
- (l) Memorandum in Support of Plaintiff's Petition for Post-Judgment Attorney's Fees and Costs
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- (n) Sheriff's Return, TKT Excavation & Trucking, 11/21/2014 (court repository entry 11/24/2014)
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- (q) Defendants' Objection to Plaintiff's Petition for Post-Judgment Fees and Costs
- (r) Claim of Exemption / Third Party Claim
- (s) Motion to Disallow Plaintiff's Claim of Exemption/Third Party Claim
- (t) Ex-Parte Motion for Extension of Time for Hearing
- (u) Order Granting Ex-Parte Motion for Extension of Time for Hearing
- (v) Notice of Hearing Re Plaintiff's Petition for Post-Judgment Attorney's Fees and Costs
- (w) Hearing Scheduled (court repository entry 12/16/2014)
- (x) Notice of Cross Appeal
- (y) Plaintiff's Opposition to Defendants' Motion to Disallow Claim of Exemption/Third Party Claim
- (z) Plaintiff's Opposition to Defendants' Objection to Plaintiff's Petition for Post-Judgment Fees and Costs

CORRECTED AMENDED NOTICE OF CROSS APPEAL - 4

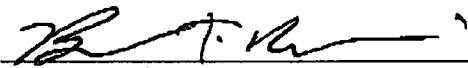
- (aa) Hearing result for Motion (court repository entry 02/09/2015)
- (bb) Hearing result for Motion for Attorney fees and Costs (court repository entry 02/09/2015)
- (cc) Order Re Attorney Fee Claim
- (dd) Order Allowing Claim of Exemption to the Royalty Check
- (ee) Sheriff's Return, TKT Excavation & Trucking, 11/21/2014 (court repository entry 2/20/2015)

7. I HEREBY CERTIFY THAT:

- (a) A copy of this Amended Notice of Cross Appeal has been served upon the Court Reporter;
- (b) The Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript;
- (c) The estimated fee for preparation of the Clerk's record has been paid;
- (d) The Cross Appellants' filing fee has been paid; and
- (e) Service has been made upon all parties required to be served pursuant to Rule 20 of the IAR.

DATED this 19th day of March, 2015.

ROBINSON & TRIBE

By: 
Brent T. Robinson
Attorneys for Northwest Sand & Gravel,
Inc.; Gordon Paving Company, Inc.;
Blackrock Land Holdings, LLC

CERTIFICATE OF SERVICE


I hereby certify that on the 19th day of March, 2015, I caused to be served the original of the foregoing, by the method indicated below, and addressed to the following:

Bradley J. Dixon, Esq.
Kersti H. Kennedy, Esq.
STOEL RIVES, LLP
101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702

☐ U.S. Mail, Postage Prepaid
☐ Facsimile (208) 331-1529
☒ E-mail *bjdixon@stoel.com*
khkennedy@stoel.com
☐ Special Handling

Tracy Barksdale
Court Reporter
425 Shoshone Street North
Twin Falls, Idaho 83301

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☐ Facsimile
☐ E-mail
☐ Special Handling


Brent T. Robinson

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,)

Plaintiff/Appellant- Cross
Respondent,)

vs)

NORTHWEST SAND & GRAVEL, INC.,)
an Idaho Corporation; GORDON PAVING)
COMPANY, INC., an Idaho Corporation;)
BLACKROCK LAND HOLDINGS, LLC, an)
Idaho Limited Liability Company,)

Defendants/Respondents)
Cross Appellants,)

and)

TOWN AND COUNTRY BANK, INC., and)
FIRE SERVICE OF IDAHO, INC.,)

Defendants/Respondents.)

SUPREME COURT NO. 42932
CASE NO. CV 12-2731

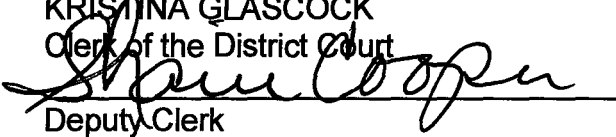
CLERK'S CERTIFICATE

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that the foregoing CLERK'S RECORD on Appeal in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

I do further certify that all exhibits, offered or admitted in the above-entitled cause, were not requested and will not be duly lodged with the Clerk of the Supreme Court.

WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 23rd day of April, 2015.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk

CLERK'S CERTIFICATE

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AGSTAR FINANCIAL SERVICES, ACA,)
)
Plaintiff/Appellant- Cross)
Respondent,)

vs)

NORTHWEST SAND & GRAVEL, INC.,)
an Idaho Corporation; GORDON PAVING)
COMPANY, INC., an Idaho Corporation;)
BLACKROCK LAND HOLDINGS, LLC, an)
Idaho Limited Liability Company,)

Defendants/Respondents)
Cross Appellants,)

and)

TOWN AND COUNTRY BANK, INC., and)
FIRE SERVICE OF IDAHO, INC.,)

Defendants/Respondents.)

SUPREME COURT NO. 42932
CASE NO. CV 12-2731

CERTIFICATE OF SERVICE

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the CLERK'S RECORD and REPORTER'S TRANSCRIPTS to each of the Attorneys of Record in this cause as follows:

Bradley Dixon
Kersti Kennedy
Stoel Rives, LLP
101 S. Capitol Blvd, Suite 1900
Boise, ID 83702

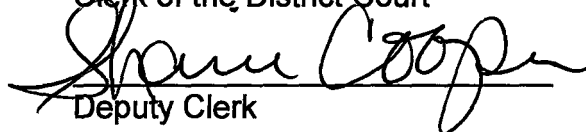
ATTORNEY FOR APPELLANT
CROSS RESPONDENT

Brent Robinson
Robinson, Tribe
615 H Street
P. O. Box 396
Rupert, ID 83350

ATTORNEY FOR RESPONDENT
CROSS APPELLANT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said this
23rd day of April, 2015.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk